UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 09-13125-jmp

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In the Matter of:

ION MEDIA NETWORKS, INC.,

Debtors.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

July 1, 2009

2:09 P.M.

B E F O R E:

HON. JAMES M. PECK

U.S. BANKRUPTCY JUDGE

HEARING re: Motion Filed by the Debtors for an Order Authorizing the Debtors to (A) Continue to Operate the Cash Management System; (B) Honor Certain Prepetition Obligations Related to the Cash Management System; (C) Continue to Invest Excess Funds in the Investment Account on an Interim Basis Notwithstanding Section 345(b) of the Bankruptcy Code; (D) Maintain Existing Business Forms; and (E) Grant Administrative Priority for Intercompany Claims and Perform Under Certain Intercompany Arrangements and Historical Practices.

FINAL HEARING re: Motion Filed by the Debtors for an Order (I) Authorizing Postpetition Secured Financing, and (II) Authorizing the Debtors' Use of Cash Collateral, and (III) Granting Adequate Protection.

HEARING re: Motion Filed by the Debtors for Entry of an Order Authorizing and Approving the Retention of Moelis & Company LLC as Financial Advisor and Investment Banker to the Debtors Nunc Pro Tunc to the Petition Date

HEARING re: Motion Filed by the Debtors for Entry of an Order Establishing Procedures with Respect to the Purchase of New Network Programming

Transcribed by: Sharona Shapiro

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P R O C E E D I N G S

THE COURT: Be seated, please.

MR. HENES: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. HENES: Your Honor, we have on uncontested matter on the agenda which maybe we can just get out of the way first.

THE COURT: You should be grateful for small things in this case.

MR. HENES: Yes. Well -- and I have some good news also for you when we get to the bigger things. The first matter on the agenda was the motion for the continued use of our cash management system. If you recall from the last hearing, the creditors' committee had some issues, wanted to look at it. We resolved that through language to the order which provides that the order is without prejudice to the right of the creditors' committee to assert that any relief granted by this order negatively affects the substantive rights of creditors. So it's basically a reservation of rights. All the proposed DIP lenders, the debtor, and the creditors' committee are all on board with it and there was no objections prior to that to the cash management motion. So I would seek approval of this.

THE COURT: That's approved.

MR. HENES: Thank you, Your Honor. Your Honor, now moving to the main event, the debtors' motion seeking approval of post-petition financing. And if I might, Your Honor, just before we really jump into anything, just to give you a little bit of an update because I know there was a whirlwind of activity and a lot of papers filed and I know you got a lot of papers that you probably didn't even get to review yet.

THE COURT: I actually did review everything that I could review, including some stuff that came in within the last half hour.

MR. HENES: Great. Well, that's -- thank you, Your Honor. I appreciate that. We all appreciate that, for your taking the time to look at that. And we apologize on behalf of everybody for getting things to you last minute. But let me give you this update, and you've read some of this.

First -- and really there's a lot of thanks that has to go out to the Court in the first hearing, because when we walked into court, obviously we had one DIP proposal on the table, we only had one group of lenders to talk to us, and we were definitely at a negotiating disadvantage and I think that came through in what was proposed.

After that hearing, we did meet with Mr. Bane's group which is made up of, I believe, about twelve or thirteen percent of the first lien holders. Sat down, met with them, provided them with diligence, and they did make a proposal, so we had two proposals. And I won't go into a lot of details unless you want details, but over the past three or so weeks we had numerous commitments going back and forth, lots of negotiations, a lot of pulling, a lot of pushing. The debtors were really trying to broker a deal, and within the last twenty-four hours we were able to broker a deal where now Mr. Bane's group supports the DIP proposal that's on the table, so we have sixty-four percent, approximately, of the first lien holders that support the deal. There's another twenty-four percent, approximately, of first lien holders who are not part of Mr. Bane's group but were actively involved in the discussions. I think that they weren't part of the group because they didn't want confidential information, although they did provide some commitments to us. They also have indicated either to Mr. Bane or his partner and to Moelis that they either support or have no objection to the DIP. So we have eighty-eight percent of our first lien holders who are now either supportive of or not objecting to the DIP.

In addition to that, just within the last few minutes, the proposed DIP lenders and the creditors' committee have resolved the creditors' committee objection, so that objection will be withdrawn. There is no objection. And I will -- I don't know if we have it yet, but I can let you know what the resolution was or just write it down so we make sure we got it right.

THE COURT: If only that had happened about two hours ago, I would have avoided forty-seven pages worth of reading.

MR. HENES: I apolog -- we would have done -- we would have avoided a lot as well. With that, that leaves only one objection, and that's the objection of Sirius Capital, a second lien holder. And I think with respect to that objection, I think there are certain issues for today and I think there are certain issues that are not for today. I think the two issues for today are number one, whether the proposed DIP lenders should be entitled to get --

THE COURT: Obama will deal with that.

MR. HENES: That's right, he's president.

THE COURT: Sorry about that.

MR. HENES: Whether the proposed DIP lenders should be entitled to get a lien on the licensed subsidiaries, the subsidiaries that hold the FCC license, to whatever extent they can under applicable law or not. And I think for that issue, I really think it comes down to, as part of our negotiations, the DIP lenders who are providing new money want to get a lien on all of the debtors' assets. I think that's pretty standard. It's what happened pre-petition both at the first and second lien holders. They made loans to the company and got liens on all of the assets including those FCC licenses. So I think that's one issue for today.

The second issue, I think, is whether the pre-petition lenders, as adequate protection, are entitled to get a replacement lien on all the assets, and I think that's a second issue for today.

I think the issue of whether the pre-petition lenders' liens on the FCC licenses are valid, and as a result whether Section 552 of the Bankruptcy Code comes into play and doesn't allow them to have a perfected lien on the proceeds of those licenses to the extent there was a sale. I think that's for another day. I don't think that relates to the DIP motion. So with that being said, let me take you through the two issues.

THE COURT: Before you do that --

MR. HENES: Yes, Your Honor.

THE COURT: -- you haven't said anything about whatever the adjustments were that led the creditors' committee to agree to withdraw their objections. And I have to assume that there have been some concessions or changes in the proposal. I'd like to know what they are.

MR. HENES: Yes, Your Honor. And if I get anything wrong I'm sure I will be told. The agreement with the creditors' committee is that there will not be a lien or a super-priority claim on avoidance actions. All will be preserved until a plan. The investigation cap will be 150,000 dollars. So I think that was raised from 50,000 dollars. And there will be now a ninety-day review period. There will be a clarification of the release and challenge paragraph to ensure that all rights of the committee to pursue claims are reserved as to pre-petition actions. And those were the resolutions.

MR. DIZENGOFF: Your Honor, if I can, just one clarification. Ira Dizengoff, Aiken Gump on behalf of the proposed DIP lenders and the majority of the first lien lenders. The lien on avoidance actions, no super-priority claim, it's reserved for a plan treatment issue so that nobody would bring those actions in advance of how they're addressed under the plan. That was our agreement with the creditors' committee.

MS. LEVINE: That's correct, Your Honor. It's status quo until a plan, but there's also no -- it's not just super-priority claims, no claims, period. And in addition to that, there were some adjustments to the programming motion proposed form of order which helped resolve the programming motion of the DIP objection.

THE COURT: Okay. What are those adjustments, since it all connects?

MR. HENES: The adjustment to the programming that I was -- the next motion --

THE COURT: Well, just to the extent that there's a cross-over into the DIP --

MR. HENES: Sure.

THE COURT: -- I just want to know what that agreement is.

MR. HENES: Sure. So with respect to the programming motion, Your Honor, if you'll recall, there's a threshold. And there were two concerns that were raised. One concern was that content providers would want to know if we were getting close to the covenant amounts. So if there's negotiating with us and we have a covenant in the DIP with respect to programming buys, that to the extent we go over certain thresholds in the DIP, we would need to get authorization by the DIP lenders to move forward. So one modification would be to provide content providers with that information so they know what they're dealing with so we have clarity on that.

The second issue was with respect to confidentiality. Content providers were concerned that we would provide notice. And so what we've done is we've agreed that we will provide content providers with the notice that we would then be providing to the parties in the case and they would have to sign off on that first to assure that there was no confidential information being provided that they were uncomfortable with. So we've made those changes as well.

THE COURT: All right. Thank you.

MR. HENES: You're welcome, Your Honor. Back to the Sirius objection. As background, and I think this background is important because I think with respect to the DIP financing we need to look at what happened. And just for a couple introductions, Your Honor. In the courtroom today we have Mr. Brandon Burgess, the CEO of Ion Media, and we filed a declaration for Mr. Burgess. And also Mr. Steve Panagos of Moelis & Company, and we filed a declaration for him as well.

Really starting at the first-day hearing when you had us all take a step out into the hallway, a very good thing, negotiations started over the day. We were able, on that first day, to get people comfortable that we did need that interim DIP of twenty-five million dollars. And then when we left the courtroom, we started immediately talking to Mr. Bane's group and to Mr. Dizengoff's group and we began to negotiate, and the debtor negotiated hard.

We pushed Mr. Bane's group for a commitment which we got. There were certain things in that commitment that we did not like and we pushed back on that, but we also used that to go back and negotiate and get some leverage over the first lien holders -- I'm sorry, over Mr. Dizengoff's group. And so the negotiations from then until we just walked in now with the stakeholders, they were difficult. We focused on making this DIP as strong as we could make it.

And as part of that negotiation, and I don't think you can separate it out, the proposed DIP lenders required, as part of this new money, to get a lien on all of the assets. And that includes, to the extent they can under applicable law, a lien on the license subsidiaries and the FCC licenses. And that is something that we the debtor agreed to.

And one of the reasons that we agreed to that -- and this I think relates directly to the objection -- is because you can't really look at the assets separately, and here's why. With respect to the licenses, the licenses have -- they do have a value, potentially, to be sold in and of themselves without Ion. Right? If the company shut down tomorrow, certain of the licenses you could sell. Certain of them probably wouldn't be worth much in this market, but when you're discussing an ongoing business, there are certain things that the company needs to pay for that relate directly to those licenses. So for instance, you need to have at least two employees right where the licenses are. You need to have a facility where the licenses are. You need to actually provide programming and certain types of programming to have those licenses, and if you don't do that, the FCC can revoke those licenses.

So as a result, the money that does come in -- and just like it did in pre-petition when the first and the second provided funds, that money flows through the organization, and by having that money and operating the business, the entire enterprise is maximized, including those licenses. So as a result, the view, and I think the good judgment of the company, was to be able to get the 150 million dollar commitment that it needs and to provide the new money first lien holders with liens on all of the assets, including those licenses. And we have the same carve-out we had in the pre-petition agreement.

The second part is with the pre-petition lenders who we need to adequately protect because this is a priming DIP. And with respect to that, our view was -- and again, it was part of the negotiation in our judgment, to provide them also with replacement liens on the assets that they had liens on and unencumbered assets, although now the avoidance actions are free from that. And so it is the debtors' business judgment that the overall DIP should be approved, and as part of that -- and I don't think we can pull it apart because I don't think -- then we won't have an agreement to actually get the commitment for the financing -- as part of that, the lenders need to get a lien on those assets.

One other point to make, Your Honor, and then I'll sit down and respond if necessary, is as you'll note, we did get a commitment letter from Sirius, and that commitment is for a 150 million dollar DIP. We've looked at that commitment, and that commitment is going to be on basically the same terms as the DIP lenders' loan. The differences are they want to have a marshaling concept -- they being Sirius here -- where they say that if the DIP lenders -- the DIP lenders need to look first to all the assets that are not in the licensing companies. And if they don't get repaid from that, then they can look to the licensing companies. That's not something that the DIP lenders are willing to do. It also does not address the adequate protection of our pre-petition lenders. So that was one difference.

The second difference is they were reducing the interest rate by two percentage points, which of course the company would like to have that. We weren't able to negotiate that with the DIP lenders. Obviously paying two points less on 150 million dollars would be a good thing, but we weren't able to get that. We did negotiate all points and try to drive the rates down, but in this market we were unable to do that.

Third, this commitment, if we were to move forward with it, one, there's conditions to it. There is, effectively, a diligence out, so it's not certain. And second, it would be a priming DIP, so we would have a priming issue with our first lien holders. When you take all of that into account, the debtors' view -- and Mr. Panagos spoke about this in his declaration -- was we don't think that that is a viable option to move down the path of the second lien holder.

Another thing that I will raise here is that under the pre-petition agreements, there's an inter-creditor agreement, and that inter-creditor agreement governs the relationship between the first lien holders and the second lien holders, and it specifically provides in there that the second lien holders cannot object to adequate protection for the first lien holders and it cannot object to a DIP that the first lien holders propose. It also provides, like all inter-creditor agreements, that as it relates to either a first or second lien holder as an unsecured creditor of the company, they can exercise their rights, but in this inter-creditor agreement, those rights are subject to the restrictions.

So we're also -- we, the debtors, in negotiating this, and looking at that issue as well, we just -- again, we don't think it's a viable option to move forward with a DIP proposal with all of those problems with it, especially when it is the business judgment of these debtors, and it was in Mr. Burgess' declaration, that we need this commitment now. We're really -- we're at a point where we're having a lot of trouble getting the content that we need. I think we have all of the parties on board that have spent time with us that are now agreeing that we do need this and we should move forward with this DIP. And if we do that, we're going to be able to maximize the value of these estates. If we don't, and we have uncertainty and potential additional litigation which will just increase the costs, that's not good for anybody and it's not going to help to maximize value.

So based on all of that, Your Honor, we believe that the DIP should be approved, as modified by all of the agreements that we've had, and that we should be able to move forward with the business. And all other issues, like whether the pre-petition lenders have liens on the FCC licenses, can be dealt with on another day.

THE COURT: I understand that's your position, and based upon that report, the only standing objection to the DIP is the Sirius objection, correct?

MR. HENES: That's correct.

THE COURT: I should probably hear from Sirius in respect to that objection.

MR. HENES: Thank you, Your Honor.

MR. LAURIA: Good afternoon, Your Honor. My name is Tom Lauria. I'm with White & Case. We represent Sirius in connection with this matter. As a preliminary housekeeping item, I had filed a pro hac vice motion to appear in this matter.

THE COURT: It's granted.

MR. LAURIA: The order had --

THE COURT: We'll treat it as granted for purposes of this afternoon.

MR. LAURIA: Thank you. Thank you. To be clear about a couple of things, there's been some discussion on the record about negotiations with stakeholders. The so-called second lien holders are owed, by the debtors' admission, about 448 million dollars here. And to my knowledge, those stakeholders have not participated in any of these negotiations that have occurred to this point. And another point I want to just kind of get to --

THE COURT: Can I just clarify something about Sirius?

MR. LAURIA: Yes. Yes.

THE COURT: Is Sirius purely a second lien holder or does Sirius have other interests elsewhere along the capital structure, including at the senior level?

MR. LAURIA: The only debt that Sirius has is second lien debt.

THE COURT: Okay.

MR. LAURIA: And second lien debt may be somewhat of a misnomer here because I think there is a view that the assets of the company, certainly if the percentages contemplated by the DIP as amended are reflective of people's expectation of value, that 150 million dollar DIP will end up with over seventy percent of the equity in the reorganized company, suggests that in fact the second lien holders may be 100 percent unsecured and have no rights in any collateral whatsoever. And thus we're here strictly, we believe, as unsecured creditors in the first instance. Recognize that that's to be played out, and we don't know the answers for sure, but there certainly are indications that people seem to have a view of value that suggests that we're entirely out of the money. With respect to --

THE COURT: Let me be --

MR. LAURIA: Okay, I'm sorry.

THE COURT: As to that comment, let me just interject and say that as to anybody's view of value, there's no evidence whatsoever in the record relating to value. And speaking for myself, I'm agnostic with respect to that question and make no judgments whatsoever as to whether any particular group is either over-secured, under-secured, or partly secured. And that determination will await some other day when valuation evidence is presented.

MR. LAURIA: Understood. Thank you. I think, though, part of this goes to the issue of the inter-creditor issue that was raised. First of all, we don't believe that the inter-creditor restriction applies to our protection of our rights as unsecured creditors, which is what we think we're largely doing here.

THE COURT: Let me ask a question about that because I'm not familiar with the inter-creditor agreement. When you say "protection of your rights", is there a provision in the inter-creditor agreement that could be interpreted as limiting or restricting the ability of a second lienor from objecting to a priming DIP?

MR. LAURIA: Yes. Yes.

THE COURT: And are you now objecting to a priming DIP?

MR. LAURIA: Well, what we're really --

THE COURT: The answer to that is yes, isn't it?

MR. LAURIA: Well, we're proposing what we think is a superior DIP. We saw the DIP proposal on the table, and my clients have put their money where their mouth is and said that we think that there are certain problems that the proposal on the table has, deficiencies, that are not in keeping with the interests that are to be protected under the Bankruptcy Code, particularly as viewed from the perspective of the license subsidiaries.

And we put our money where our mouth is and said okay, we will provide the DIP and we will protect those interests as the existing proposal will not. And we think as a consequence, whether or not you characterize what we're doing here as an objection, we've put a superior proposal on the table, and we intend to challenge, both substantively and from a process perspective, the debtors' purported exercise of its business judgment in connection with approving or going forward with the DIP that's on the table.

In that regard, I should say we do not waive our right to cross-examine the witnesses who we understand are here and have proffered declarations. We believe it is our right to examine those witnesses if their affidavits are to go into the record as evidence, and we think there are some serious issues that we want to address in that regard.

THE COURT: Okay.

MR. LAURIA: In particular, Your Honor, what's troubling here is we've tried to lay out very briefly in our papers -- se think that the better view of the law is that in fact the lien that was granted on all assets of the debtors prior to the bankruptcy does not attach to the FCC licenses.

We think the FCC, who under Section 310(d) of the Communications Act in 1934, was given authority to determine who can acquire an interest in an FCC license and under what circumstances that interest can be held or enjoyed, has spoken clearly to the point that in fact no lien can be granted on an FCC licenses.

THE COURT: Isn't that what, from a structuring perspective, very frequently companies that enjoy the benefit of such licenses set them up in special purpose entity subsidiaries and rights are granted by means of the pledge of stock --

MR. LAURIA: Right.

THE COURT: -- of such special purpose entities, correct?

MR. LAURIA: Yes, exactly.

THE COURT: Okay. And if they --

MR. LAURIA: And that's true in this case. That exists in this case.

THE COURT: All right.   That --

MR. LAURIA: What's different --

THE COURT: That being so, that means that whoever enjoys that pledge has the non-bankruptcy equivalent as prior rights.

MR. LAURIA: Well, there are a couple of qualifications to that. Importantly, both the first and second lien lenders have guarantees given by the license subsidiaries. So we are direct creditors of those entities. And so if there is no lien on the license, we are unsecured creditors of those entities and we are entitled, we say, to share, pari passu, with all unsecured creditors. There's no subordination provision with respect to unsecured obligations.

THE COURT: And as a matter of law, what is that right worth, given what you've just said about the FCC's position in not permitting liens to be granted in such rights and the limitation upon ongoing vitality of such licenses that are use-related?

MR. LAURIA: We think, Your Honor, that the value is actually substantial. In fact, it's enhanced because of those principles. And that is, as unsecured creditors of these entities that own FCC licenses that are on a stand-alone basis quite valuable, we believe that in a plan of reorganization, as unsecured creditors, we have to share with the other unsecured creditors of those entities in that value, however that currency is fashioned. Of course, if there is some sort of transfer of ownership or control, we recognize it's subject to FCC approval, but that would be something we deal with in due course.

And just to kind of put it in a framework for the Court, our 448 million dollars is approximately 38 percent of the debt owed between the first lien lenders and the second lien lenders. So we believe that we would be entitled, in the first instance, to share roughly thirty-eight percent of any value that is attributable to the FCC licenses held by these entities where we're all creditors.

Now, that percentage goes up, in all likelihood, because the first lien lenders probably pay down a significant amount of their claim by virtue of their first lien on the collateral interests of the other debtors. So their claim starts out at 700 odd million and gets whittled down, maybe to even less than our 448. So maybe at some point in time we actually get a majority of the value.

And what's important from our perspective, we're not here to ask the Court to decide these issues today. I think we agree with debtors' counsel that those are issues to be decided in due course in the case, either as a consequence of some agreement between the parties or as a resolution by this Court or perhaps in another form. One of the things that we've been grappling with over the last couple of days is to try to understand whether or not at the end of the day it is the FCC who has the ultimate right to determine who has an interest in a license that it's issued. The FCC has clearly stated numerous times that the interest of a licensee in an FCC license is not an interest in property that the holder of the license can encumber or transfer or do anything else with, other than as permitted by the FCC. And so there are some jurisdictional issues that potentially we have to deal with in this proceeding.

Nevertheless, what we want to do is preserve the rights of the creditors of the FCC license subsidiaries and make sure that the DIP financing, as proposed, doesn't take value away without providing a way to put that value back in, if in fact the value should be there at the end of the day for the benefit of those debtors' creditors.

Now, the problem we have here is that the debtors' CEO, just to pick on him as an example, is horribly conflicted. Okay? He wants the DIP financing because his salary gets paid up at the parent level. He doesn't get a salary at the end of the day if there's no financing. The business goes dark. So as a director of the license subsidiary, he says yes, of course, this is a wonderful DIP, it provides financing for the parent company who pays my salary. But what we don't see in the declaration, and what we need to hear from the CEO when he testifies, is how he determined that the benefit to the license subsidiaries exceeds the 150 million dollars of liens and super-priority claims that are going to be imposed, jointly and severally, on the assets of the license subsidiaries if this DIP is approved.

THE COURT: Mr. Lauria, why is this any different from any other case that includes unliened assets in which a DIP lender shows up and says, as DIP lenders say in every case, I'm getting a lien on everything. I'm getting a lien on what's already encumbered and I'm getting a lien on what's unencumbered. And as an unsecured creditor, if you want the business to function, you sit down and accept it. Why don't you sit down and accept it?

MR. LAURIA: Well, because the FCC licenses, Your Honor, have value that is independent and intrinsic that has nothing to do with the operation of this business. Okay?

THE COURT: You just said they're not readily assignable without FCC approval. So how can you talk about value on the one hand as existing and on the other hand as actually being subject entirely to the FCC's discretion?

MR. LAURIA: These licenses are sold all the time. And in fact --

THE COURT: I know they are.

MR. LAURIA: -- the expert testimony --

THE COURT: But they're sold all the time with the approval of the FCC.

MR. LAURIA: Correct. You have to find an acceptable purchaser to the FCC. There is no question -- and there's a questionnaire, in fact, a questionnaire that the FCC requires an assignee to complete to determine if they're going to be approved is attached to our supplemental filing with respect to our limited objection. And the FCC reviews that and they determine if the assignee is acceptable or not.

What experts will tell the Court, though, is that the value of a license not associated with a major national network -- and these licenses are not associated with a major national network. In fact, I think the banner for these debtors is that they're the largest independent broadcaster in the country, not a major national network. What the expert testimony will show, in time, is that the value of such a license is a function of the market that the license covers. It has nothing to do with the sticks and bricks in the operation of a business. A person comes in and buys that license to have access to the market, and generally they don't even care about the broadcast capacity of the existing business. They'll have their own or create their own in their own fashion. In fact, that's how this business, Paxson Communications, as it was formerly known, was largely created, was through going around and buying up these little businesses around the country, taking the licenses and then incorporating them into the Paxson operation.

And so as an unsecured creditor, Your Honor, the reason we stand here and the reason we're concerned is because we believe that the DIP, as proposed, basically takes 150 million dollars of value that we think is extent in the license subsidiaries, and moves it up to the parent so that the parent can keep operating a business in which we, at the end of the day, will get no recovery because the first lien debt is going to absorb all of that value. So it's just a value allocation as between debtors or between different creditors, and we don't believe that's consistent with the principles or policies of the Bankruptcy Code. And what you have here, remember, is not substantively consolidated debtors.

And this is a problem that we have in a lot of cases. I mean, we've been involved in a lot of cases where these issues come up because typically businesses outside of bankruptcy, when they're solvent, are run as an enterprise, and you have all of these different legal entities and there's no problem, there are no conflict issues because all the duties fly up to the same people, the ultimate shareholders. But when insolvency intervenes, and in particular when you're in bankruptcy where the Code specifically says that each debtor owes fiduciary duties to its creditors, that no longer works. So in fact, if challenged, each debtor has to demonstrate that it made a good decision.

Let's start out with business judgment, in the absence of a conflict that it properly exercised its business judgment in entering into the financing. The problem that we have here, and it's obvious, is that the officers and directors of the license subsidiaries are conflicted. They're all officers and directors of the parent, we believe, or other debtors. And so therefore, the license subsidiaries don't get the benefit of the business judgment rule in connection with the resolution of this matter, rather the burden falls to them to establish the overall fairness of the transaction. So they've got to show the benefit in the burden and that it was a fair result.

And I think that the problem that we have here is that the license subsidiaries are not going to be able to show accretive value to them of 150 million dollars or more as a consequence of incurring joint and severable liability for this 150 million dollars.

THE COURT: Mr. Lauria, I hear your argument. It almost sounds like an argument you'd be making at a confirmation hearing instead of at a DIP hearing. This is a company which without the DIP, based upon the declarations that I've seen, falls off a cliff. It allegedly -- and I accept the declarations -- needs the money, and you must agree because you're proposing a DIP yourself as a junior creditor. So you can't be taking the position the money isn't needed. Since the money is needed, and since even under your proposal you have a marshaling concept as opposed to a "we don't want an interest in these assets" concept, I don't understand your position for today.

MR. LAURIA: Well, Your Honor, the position is -- let me try to do a better job. I apologize --

THE COURT: No, you've done a fine job for confirmation. I don't believe you've done a fine job for the DIP.

MR. LAURIA: Well, the problem we have with the DIP, is that it's going to make these entities jointly and severally liable for 150 million dollars of --

THE COURT: And doesn't that happen in every single enterprise which goes into bankruptcy and has unliened assets? Any DIP lender worth it's salt, assuming we're dealing with an insolvent enterprise, will be looking for a lien on everything that is lienable.

MR. LAURIA: Correct. That doesn't mean that they get it. It doesn't --

THE COURT: That means they probably do get it if the company is going to get financed.

MR. LAURIA: Well, our problem is that were this all one legal entity, the dispute -- the problem that we're trying to solve wouldn't exist. Okay? And I can't speak to these other cases, Your Honor, because I don't know the facts and circumstances of each one. I don't know if anybody was, you know, paying attention to come in and object and raise these issues, but to be clear, we have not just come in to mess up the soup here. We didn't want to put the Court in a position where we were saying don't approve the DIP and let the rest of the company languish so that the creditors of only the license subsidiaries can realize value. We did not want to put the Court in that position.

What we came in today to say is we are prepared to reduce the interest rate -- we're prepared to take the credit agreement that's on the table, we're prepared to reduce the interest rate by two percent, in default or not in default. We originally had proposed that we would hold 30 million dollars of the 150 million dollar DIP. We have made clear to counsel for the debtors that we'll withdraw that requirement, that in other words, we will simply act as the syndication agent for that DIP to the first lien lenders. We'll let them take all of the DIP.

So it's the same deal, them priming themselves with all the same protections, except -- except that when it comes time to allocate value, whether under a plan or as a consequence of a sale, the DIP loan will have to be satisfied first from the value at the non-license subsidiaries. And only if that DIP, as it exists, has a deficiency, we then allocate recovery down to the license subsidiaries.

We think that that minimizes and perhaps even eliminates the harm that we're here complaining about and concerned about flowing from the proposed DIP. So we're not saying don't do the DIP. We're saying let's fix the DIP, let's make it work from the perspective not only of the parent company, let's make it work from the perspective of the subsidiaries and their separate creditors as well.

Now, the comment has been made that well, yeah, but your proposal is subject to a diligence out. We got a proposed confidentiality agreement from the debtor Monday morning. We returned it to them marked up Monday afternoon. We haven't gotten any response since then. We've told them that our diligence can be completed in two to three business days. We've told them that we would be prepared to fund on the 8th of July. And Your Honor, if we would look at the items that we asked for diligence, this is not the typical corporate diligence demand.

We've asked for basically five things. We've said that we want to see the BIA appraisals for 2008 with respect to the FCC licenses. We've said that we want to see what the obligations are at each of the subsidiaries, just the company's books and records on liabilities at the subsidiaries. We want to have a discussion with management about the business. We want to see the 2009 forecast. And we want to get whatever was given to the minority who came in to make the original competing proposal. That's it.

And we will be either there with our money in our pocket ready to write the check by the 8th -- and if we have to do it quicker I think we can do it quicker -- or we are out of your hair because we've made our try and we couldn't get there. So we're trying to accomplish what is clearly the objective of the Court and the debtor here in terms of preserving the ability to reorganize the business as a going concern without unduly prejudicing the rights of creditors at the license subsidiaries as a consequence of the imposition of the DIP claims.

So I don't think this is a confirmation argument. I mean, it could be an argument that gets made at confirmation, but once the DIP is in place and the order is final, I think crying about that is crying over spilled milk. I don't think we can undo that in any way unless the Court fashions some further relief that would save our issue for another day, which we would be pleased with. If there were some way to otherwise approve the DIP but say it is without prejudice to the creditors of the license subsidiaries to -- if they're right -- to force the DIP recovery to not impair their recovery at a later point in time. That would be satisfactory as well. The marshaling concept is just what we came up with as the simplest, most efficient, and expeditious way to solve this problem for today as a place holder so that we can move forward in the case and determine how these other issues are going to get addressed.

THE COURT: Have you considered the question as to whether or not your client is exposed to a breach of contract claim -- a nonbankruptcy breach of contract claim under the inter-creditor agreement on account of your standing here, and the degree to which you create a destabilizing event in the bankruptcy case were you to, in effect, be at war with the first lien holders because your objection violates a provision of the inter-creditor agreement?

MR. LAURIA: We have, Your Honor. We have. And I mean, they're --

THE COURT: And apparently you're prepared to assume that risk?

MR. LAURIA: Well, I'm standing here.

THE COURT: Well, yes, I suppose you are, but I don't know if you've given an opinion of counsel that you're not going to expose your client to some risk as a result of that.

MR. LAURIA: No. We've not given such an opinion.

THE COURT: I figured you wouldn't.

MR. LAURIA: My client's actually here. You can ask him. We can confirm that they've got no such opinion --

THE COURT: Okay. I --

MR. LAURIA: -- on that topic.

THE COURT: Right. I'm not surprised they didn't get such an opinion.

MR. LAURIA: Right. What we do think, though, is important, is that provision in the inter-creditor is not the equivalent of a gag order. It doesn't mean that we can't come here and do what we need to do to protect our interests. It means we balance our issues, our pros and cons, and we make a decision. And if somebody is successful in establishing that what we're doing is a breach, which I don't think they can -- which I don't think they can.

THE COURT: I'm not proposing that anybody should.

MR. LAURIA: Right. Right.

THE COURT: I'm just asking the question.

MR. LAURIA: Then we have to deal with that in due course. We understand that. We're not here in any other capacity. But we are concerned that the debtor is willing to take positions on issues, including whether or not the lien attaches to the FCC license, in the face of very scant and, we have argued, poorly reasoned bankruptcy authority in the face of what appears to be to us explicit statements from the FCC that the lien doesn't attach. But it's that conflict issue kind of getting in the way again. It's unusual for the debtor to so quickly, so firmly say oh, yeah, there's a lien on everything here, we don't need to look at that or think about that, when you have an issue that there really is room for doubt on in the best case.

In the very best case, I think that you would have to concede -- I think that the parties would have to concede that there's room for doubt here. And I think in the worst case, if you just take the FCC at face, whether it's in the Chesky (ph.) decision or in Merkel (ph.), that they have said unequivocally no lien on an FCC license. And they've gone on to expound on it and say the reason for that is because the debtor doesn't own any interest in the license. It has no property right that it can encumber.

So just as a preview of the ultimate argument, that then brings into question 552. We believe 552 says that if they have a continuing lien in post-petition proceeds, a secured creditor has to have a pre-petition security agreement that grants an interest in the property and a security interest in the proceeds. To read the requirement that there be a security interest in the property would just read that language out of Section 552 and make it meaningless, which the Supreme Court has told us you can't do.

The Supreme Court has said time and time again the Bankruptcy Code is comprehensive statutory scheme. You've got to give meaning to all of its language -- plain meaning to all of its language. And the plain meaning says that if you want to have a continuing lien in proceeds post-petition, pre-petition you had to have a lien in two things: the property and the proceeds. And we think the FCC is clear on one. And we think 552 makes it clear on the other.

So we in fact think even if a transaction in this case were to be structured as a sale transaction, and we have no reason to believe it will -- in fact, to the contrary, all indications are this is going to be a reorganization, an internal reorganization, in which case you don't even have to argue about what 552 meant. The direct head-on issue is are we all unsecured creditors as to the licenses. And we think there's significant value at play here, and maybe 150 million of that gets taken off the table by the debtor at the license subsidiary, which is where we think we get a recovery.

So we're prepared to go forward rapidly and write the check or go away. And we're prepared today, just to build out the record a little bit regarding the process and the assessment that was made as officers and directors of the license subsidiaries in agreeing to encumber their assets with this liability.

THE COURT: I think I understand at great length your position, and I think it's now up to the debtor to put on a case. And if you wish to examine witnesses or renew your objections in connection with their proffer, you're certainly free to do that.

MR. LAURIA: Thank you.

(Pause)

THE COURT: Now, you may, Mr. Henes, wish to respond to some of what you've heard or --

MR. HENES: Yes.

THE COURT: -- you may wish to begin moving into your case-in-chief with respect to the DIP, but it's your turn.

MR. HENES: Thank you, Your Honor. John Henes, Kirkland & Ellis on behalf of Ion. And Your Honor, before we get into any testimony, just a couple of points. One is the inter-creditor agreement, because the inter-creditor agreement is clear, and Mr. Lauria can try to dance around whether this is an objection or not, I think it's pretty clear it's an objection.

The inter-creditor agreement specifically, explicitly provides that a second priority secured party, a second lien holder shall not oppose or object to any DIP proposal that the first lien holders provide. I mean, it's explicit, there's no other way to read that. And that's in Section 11(c) of the inter-creditor agreement. There's then Section 16 of the inter-creditor agreement which it talks about rights as unsecured creditors. And that says, "Except as otherwise specifically set forth in Section 11 of this agreement". So the section that say you can't oppose anything. It says that the second lien holders may exercise their rights and remedies as unsecured creditors.

So I think one issue here is that we're sitting here today trying to get a DIP approved that second lien holders are not entitled to object to, whether it's as an unsecured creditor or as a second lien holder, yet we have that objection and we're going to need to spend the time, I guess, dealing with it.

THE COURT: Well, we'll deal with it, and whatever consequences flow from it will flow from the fact that we're here perhaps in violation of paragraph 11(c) of the inter-creditor agreement. Is the debtor a party to that agreement?

MR. HENES: I believe so, yes, Your Honor. Hold on.

I don't have the signature page. Right, yes, Your Honor, the inter-creditor agreement -- well, hold on, let me make sure before I say something that's wrong. Yes, we are a party to it, Your Honor.

THE COURT: All right.

MR. HENES: That's one issue. Second issue is just in terms of, you know, there was a lot of talk about unduly prejudicing people. We received the initial limited objection on the 15th. We then got a call, the first call from counsel on the 26th to discuss it. And then we received a written commitment to the DIP on the 29th. And then we got this supplemental objection. So this is a process that this second lien holders -- because now I want to be clear about another thing, which is that can we talk -- that Mr. Lauria talked about over 400 million dollars of second lien holders. Not one -- there's not a second lien holder other than Mr. Lauria's client that's raised their head or said a word about anything. All right? So we have one second lien holder -- I don't know what that second lien holder holds -- that clearly knew about everything that was going on, knew enough to hire counsel and file an objection on the 15th, but then didn't approach us and give us this written commitment until two days before a hearing on a DIP that they knew, at least from reading what had been going on, was contested. So I think the debtor here is a little bit unduly prejudiced by what's happening here with one second lien creditor making these arguments and violating the inter-creditor agreement to do it.

So look, with that being said, we are here, Your Honor. We filed two declarations with respect to our DIP. We filed one for Mr. Brandon Burgess, as I mentioned, who's in the courtroom today, the chairman, president and CEO of Ion. And we also filed a declaration by Steve Panagos of Moelis & Company. What I'd like to do is to -- unless there's an objection -- to have these deemed to be evidence for today, obviously subject to cross-examination.

THE COURT: Is there any objection to my receiving into evidence the two declarations that have been identified by counsel?

MR. LAURIA: No, Your Honor, subject to our right to cross-examination.

THE COURT: Fine. They're admitted.

MR. HENES: What I'd like to do, though, Your Honor, and I don't want to take up too much time, but I would like to take a very brief recess, if it pleases the Court, just to talk to the client for a second to make sure the client understands what's actually happening right now, because there was a lot of things thrown out here that were not specifically in the objections.

THE COURT: So we're off the play book?

MR. HENES: Well, it's not off the play book, it's just, you know, these are -- a lot of this stuff is technical bankruptcy -- I don't know if it's bankruptcy, but technical issues.

THE COURT: If you want a brief adjournment that's fine. Let's adjourn for ten minutes.

MR. HENES: Thank you, Your Honor.

(Recess from 3:01 p.m. until 3:24 p.m.)

THE COURT: Be seated, please.

MR. HENES: Good afternoon again, Your Honor. Your Honor, one more introduction. I want to introduce my litigation partner, Mr. Joe Serino, who's here.

THE COURT: Good afternoon.

MR. SERINO: Good afternoon.

MR. HENES: And with that I think I will sit done and leave the podium for Mr. Lauria so he can let you know what he would like to do next. We just put in our declarations.

THE COURT: What happens now?

MR. HENES: We're going to rest, Your Honor --

THE COURT: You're going to rest.

MR. HENES: -- subject to redirect.

MR. LAURIA: I don't think it's redirect. I think they need to put a witness on and I'm going to cross him, is I think what happens.

THE COURT: Which witness do you want to cross?

MR. LAURIA: I'd like to cross them both.

MR. LAURIA: Then we'll start with --

THE COURT: Which one do you want to cross first?

MR. LAURIA: I'd like to start with the CEO.

THE COURT: All right.

MR. HENES: Okay. Brandon?

(Witness sworn)

MR. LAURIA: Your Honor, before we get started, I'd also like Mr. Panagos to be excused from the courtroom so that he does not hear the testimony of Mr. Burgess.

THE COURT: It's a request for sequestration.

MR. HENES: No objection, Your Honor.

THE COURT: He can wait in the hall.

(Pause)

THE COURT: Proceed.

CROSS-EXAMINATION

BY MR. LAURIA:

Q. Can you please state your name again, please?

A. Roy Brandon Burgess.

Q. And what is your title?

A. Chairman and CEO, Ion Media Networks.

Q. Is that the only entity that you're an officer of or a director of?

A. I'm an officer also at various of our subsidiaries.

Q. All of them?

A. I don't know if every single one, but a good number of

them.

Q. How about a director? Are you a director of all of the debtors?

A. I'm not sure I know the exact nuance of officer and debtor -- officer and director. I'm certain I'm an officer, I don't know if I'm a director of every one of the entities.

Q. All right. Do you know which of the -- I take it that the pleadings that have been filed by the debtor in the case have a footnote on page 1 that purports to identify all of the debtors. Are you familiar with that footnote?

A. Generally speaking, I believe so, yes.

Q. All right.

MR. LAURIA: If I may approach the witness, Your Honor?

THE COURT: You may.

Q. It's just this first page of that motion. Mr. Burgess, could you please take a look at footnote 1 for us?

A. Yes.

Q. Is it your understanding that all of the Ion affiliates that have filed Chapter 11 petitions are listed in footnote 1?

A. Well, yes, and I believe the footnote carries over, but yeah, that's my understanding.

Q. Yes, it's on page 1 and then it continues on the second page as well.

A. Yes.

Q. Are there any subsidiaries, direct or indirect, of Ion that are not debtors?
A. I don't believe so. I don't know that 100 percent as a technical matter, but I believe the majority of our subsidiaries, particularly as they pertain to the stations, I believe all of them are part of the proceeding.
Q. And how does Ion holds its FCC licenses?
A. The structure that we inherited here was that typically we have two entities at the station level, one as an operating entity -- which I believe are also in this footnote somewhere although I don't see them -- and then we have a license entity. The license entity holds the license. The operating entity holds whatever assets are at the local level, employees, and those sorts of things.
Q. How many stations do you have?
A. Fifty-nine plus some low-power stations.
Q. Okay.
A. But fifty-nine full-power stations.
Q. Fifty-nine regular stations? What does that mean?
A. Fifty-nine television stations that have a full-power broadcast transmission right under the FCC rules as opposed to a low-power transmission right.
Q. And how many low-power stations do you have?
A. I'm not going to get it exactly right. I believe we have about twelve to fourteen, I believe, some of which are not

active and some of which aren't even built.
Q. All right. So do each of those fifty-nine TV stations have a license?
A. Yes.
Q. And the license is issued by the FCC?
A. Correct.
Q. And currently all those licenses are in good standing, is that correct?
A. With I believe one exception, I believe our Washington station -- Washington, D.C. station is still in a renewal -- in a pending renewal proceeding, I believe.
Q. I'm sorry, could I ask that you move the microphone just a little closer? I'm having a hard time hearing you.
A. I apologize. I believe our Washington, D.C. station.
MR. LAURIA: Your Honor, I'm sorry, it's just -- it doesn't seem to get any better.
THE WITNESS: Better now?
MR. LAURIA: Yes.
THE WITNESS: All right. I'll almost eat the microphone.
THE COURT: That's almost too much.
MR. LAURIA: Two inches further away.
THE COURT: A happy medium. You're in the broadcast business. Let's figure it out.
THE WITNESS: Yeah, I should have taken voice training

for this one.

A. What I was saying is I believe our Washington, D.C. station is still in an FCC license renewal pending state.

Q. What does that mean?

A. It means every so often all of our FCC licenses have to be renewed, they have to be in good standing. And when the renewal cycle happens parties can come out and petition if they have issues with a station, and there was a petition in Washington that we inherited from years ago when the company was still under old management where somebody objected to some of the programming that was aired, and that still is not fully resolved yet is my understanding.

Q. Have you ever sold a station -- a TV station?

A. Have I ever sold a TV station? Yes.

Q. Yes. And you're familiar with the form that you have to submit to the FCC when you do so, is that right?

A. I am generally familiar with it, yes.

Q. Right. Are you aware that that form specifically requires you to certify that no creditor has a lien on a license?

A. I am generally aware that is something we have to state, yes.

Q. All right. So when you sell a station you are able to provide that certification, is that correct?

A. When we sell a station -- well, I'm not sure, I mean, we're not selling a station. In other words --

Q. But you have sold a station in the past?
A. You mean in my current job or in a prior job?
Q. Let's start with your current job.
A. My current job. We sold only one low-power television station eve since I've had this job.
Q. All right. And you were able to sell the station, is that correct?
A. Yes, we were.
Q. And you had to go through a process of getting FCC approval to do so, correct?
A. That is correct.
Q. And you are familiar with the requirement, again, that you have to certify that no party -- no creditor has a lien in the license to get that FCC approval, is that correct?
A. Well, to be honest, I don't actually know if the requirements are the same for low-power versus full-power stations, so I wouldn't want to misspeak, so I don't know. In that instance we were able to sell the station. I don't know what exactly the creditor status or the loan status was of that low-power station we sold.
Q. Have you ever bought a station in your current job?
A. No.
Q. So the fifty-nine full-power stations were part of this business when you became CEO?
A. Correct.

Q. All right. Now, you're familiar with the terms and provisions of the DIP financing that's before the Court today, is that correct?
A. Generally, yes.
Q. Have you participated at all in the negotiation of those terms?
A. Not directly. The vast majority of the negotiation was done through the professionals.
Q. So how did you become familiar with the terms?
A. The professionals kept us updated, kept me updated, management updated, and kept the board updated on the progress and the various iterations of the negotiation.
Q. Now, when you say "the board", which board do you mean?
A. The board of the parent company, Ion Media Networks, Inc.
Q. All right. What about the boards of Ion's debtors' subsidiaries? Have they been kept up to speed as well?
A. We do not have separate board meetings, if that's your question, for each and every station that's part of this process, no.
Q. Did you have any board meetings for any of these stations?
A. No.
Q. All right. So you had a board meeting at the parent?
A. Correct.
Q. All right. And was there a board meeting in the last few days to approve the amended proposal?

A. Yes.

Q. And in that meeting, you received a presentation from the advisors about the proposal?

A. Yes.

Q. And can you tell the Court what your understanding is of the terms of the financing?

A. My understanding? My understanding of DIP financing is that its purpose is to let us go about our business in the near term, to proceed in the ordinary course, to revitalize the company, and the amount of that funding that would be available would be up to an amount of 150 million dollars, of which 100 million dollars would be available in the immediate term. That will be that it has a relatively high interest associated with it of -- the exact rates I don't have at the top of my mind right now, and that the company can repay that debt over the course of the process if it can, or the company can elect, if it has no other opportunity, to convert the financing into equity if that's necessary.

Q. How does the company convert the financing into equity?

A. I'm not sure --

MR. SERINO: I'm going to object to the question, Your Honor, to the extent it calls for a legal conclusion or a legal construction of the documents.

THE COURT: Sustained.

MR. LAURIA: Your Honor, I'm just asking for a businessman's understanding, not for any kind of legal conclusion whatsoever.

THE COURT: Well, look, you're prepared to ask him the questions. We can all read the documents. What's the relevance of this witness's understanding, from a business perspective, of a technical loan provision, and why do you need it as part of this cross-examination?

MR. LAURIA: Well, I think it's pretty unusual for a DIP financing to provide for conversion into equity, and I actually -- to tell you the truth, I don't understand how that's going to happen either.

THE COURT: I suggest you talk to counsel. I've sustained the objection. Ask your next question.

BY MR. LAURIA:

Q. So I take it that at this board meeting you were informed that you received a competing proposal from my client?

A. Yes.

Q. And was the proposal explained to you?

A. Yes. I mean, generally speaking, yes.

Q. And how was it explained to you?

MR. LAURIA: Strike that.

Q. What is your understanding of the proposal that my client made?

A. My understanding is that it is, broadly speaking, similar to the type of financing we are asking to have approved in

terms of its cost and size and those sorts of things, but it added -- it has some number of executional challenges and time delays that may make it more prudent to proceed with the existing financing at hand that has been fully committed and diligenced.

Q. Well, let me ask you, when you say you think it's similar, are you aware of the fact that it proposes the interest rate to be two percent less?

A. Yes.

Q. And are you aware of the fact that it proposes that, through whatever mechanism this debt would get converted into equity, it gets converted into less equity?

A. Modestly, that is my understanding, yes.

Q. Modestly? Are you -- you say "modestly", are you familiar with the percentage that the DIP proposal you're asking the Court to approve gets converted into?

A. I believe -- I may get it slightly wrong, but my understanding is it's a couple percentage points above the proposal that your client has put forward.

Q. All right. Would it surprise you if I said that the proposal that you're asking the Court to approve contemplates the DIP lenders getting over seventy percent of the equity in the reorganized company, and that in fact our proposal says that it would get less than fifty-six percent?

MR. SERINO: Objection. Mischaracterizes the DIP proposals, both of which speak for themselves, Your Honor.

MR. LAURIA: I just asked --

THE COURT: It's sustained. It's an incredibly argumentative question as well. Why don't you just get to the business of probing the witness in a way that's less histrionic and more focused on the facts. "Would you be surprised" questions really aren't particularly good questions.

MR. LAURIA: Can I make a statement and ask if he agrees with it?

THE COURT: You can ask your questions any way that don't get objections. Ultimately it's up to you --

MR. LAURIA: All objections are sustained.

THE COURT: No. Ultimately it's up to you to ask the questions that don't produce objections that I sustain.

MR. LAURIA: Okay. Thank you, Your Honor.

BY MR. LAURIA:

Q. So do you agree -- do you agree that the proposal that my clients made contemplate the conversion into equity as 56 1/4 percent or less?

A. I'm sorry, are you saying that's -- is that my understanding? Is that what you're asking?

Q. Do you agree with that statement?

A. Do I agree with that statement? I suppose so.

Q. You don't know?

A. I don't know.

Q. Was that not an important consideration for you in evaluating the competing proposals?

A. It was -- look, we have received a lot of counsel from a lot of attorneys and bankers, and they've done a very good job as far as I'm concerned in significantly improving the proposal that we have received over the last four weeks. I know that because we've all been working for twenty hours a day. The importance, I think, that I'd like to emphasize is access to the money so we can operate the business, and if you want to know the truth, that's where my focus has been. And feasibility for that purpose has been an important -- you know, my questions have been around feasibility and timing.

Q. So those are the two things that are important to you?

A. Operationally, yes.

Q. Getting the money and getting it quickly?

A. Yes.

Q. Is that correct? Do you have an operating budget for 2009?

A. I do.

Q. Does that budget reflect how much of the DIP you expect to spend?

A. Yes -- approximately, yes.

Q. Approximately how much does it indicate the company will be spending?

A. Approximately, if we proceed with the budget, you know, not being able to know exactly what the process costs here will be, what our revenue weakness will be, we would have a cash balance at the end of the year of roughly thirty million dollars, so implicitly we would draw sixty to seventy million dollars of the financing we would have access to.

Q. Sixty to seventy million?

A. Yes.

Q. How much do you show you're going to draw in the next week?

A. In the next week? Well, that's a very interesting question. I would like to draw, depending how today goes, very quickly to fortify our program base. So we have been in discussions with programmers for various programs that in the aggregate, you know, an amount negotiation volume of 150 million dollars over multiple years. I'd like to pursue one or two of those deals, at a minimum, within the next week. So this is a real time issue for management.

Q. So how much of the DIP do you anticipate drawing in the next week? That was my question.

A. I'm not sure I can answer that question precisely, but it will be -- it would be tens of millions of dollars.

Q. How much of the DIP have you drawn already?

A. We haven't drawn anything directly because what we needed to do over the last three or four weeks since we last met here is to get our negotiations reactivated that have been stalled

out, pending this proceeding. So we're now in a position that I have, you know, two or three of the vendors willing to transact with us. You know, they're all presumably waiting how today goes. And I would proceed with two or three of those negotiations and try to bring them home.

Q. I just want to make sure I understood you right. Is it your testimony that you've made no draws under the DIP to this point?

MR. SERINO: I think there's a confusion over the phrase "draw" in the way it's being used in this question. Has the money been drawn down by the company? Has the money been committed by the company? Has the money been spent?

MR. LAURIA: Your Honor, I would appreciate it if counsel would make an opposition and not give a speaking objection.

THE COURT: It is a speaking objection, and I'm not sure what the objection is other than, I suppose, a request to clarify the question, but I'm not going to require that you clarify the question. The question can be answered as phrased.

A. So I'm sorry, your question was whether we've drawn --

Q. Is your testimony that the company has made no draws under the DIP to this point?

A. No, that's not my testimony. My testimony is that we had a de minimis amount of cash on our balance sheet. We have a little bit more cash on our balance sheet, at least enough that

people will talk to us again about programming. That's my testimony.
Q. So your testimony is that you've made a draw under the DIP financing?
A. No, that's not my testimony. I'm not sure exactly what you're getting at. We spend millions of millions of dollars every single week. I'm not sure what you're getting at. Obviously we're trying -- we're operating a cash management system to try to keep our receipts as close as we can --
Q. I'm asking you if you borrowed any money under the DIP.
A. We've borrowed -- yes -- I mean, have we borrowed any money under the DIP? Yes. We received twenty-five million dollars under the preliminary --
Q. You received twenty-five million dollars?
A. Yes.
Q. Okay. And so is that money sitting in the bank today?
A. Yes, it is.
Q. All right. And what's your bank balance today?
A. About forty-four million dollars, forty-three million dollars.
Q. All right. And you testified just a moment ago that you're going to borrow -- let me try the word borrowing instead of drawing, if that was creating some confusion for you. Is it your testimony that you're going to borrow tens of millions in the next week under the DIP?

A. No, we're going to be spending and committing, for program purchases, meaningful amounts of cash.
Q. All right. But you're not going to be borrowing under the DIP in the next week?
A. Well, I hope we will if today goes well.
Q. Well, you have a budget, correct?
A. Yeah, we have -- yes.
Q. Does it reflect that you're going to make borrowings under the DIP in the next week?
A. Yeah, those were the numbers I was trying to give you. Perhaps I was not so articulate, but what we are requesting is that we have the opportunity to draw, I guess, as you call it, another seventy-five million dollars that gives us basically roughly a 100 million dollar amount of money to work with for the balance of the year, of which we would utilize sixty to seventy and have the rest available as working capital.
Q. Now, is that sixty on top of the twenty-five or does it include the twenty-five?
A. I'm not sure what you mean. What I'm saying is we have forty-four million on the balance sheet. We would like to add seventy-five million dollars to give us just over 100 million dollars, and then we will spend sixty to seventy million dollars on marketing, programming, operations, employees. So the balance towards the end of the year, if we're successful in doing all of those things, would be about thirty-two million

dollars or something like that.
Q. All right. So --
A. Which is about fifteen percent of our revenue, which we think is a prudent working capital base for a company of our size.
Q. So your testimony is that you're going to borrow seventy-five million dollars and just hold that cash on the balance sheet in addition to the forty-four that you have?
A. No. We're going to spend. We're going to spend a large amount of money as it relates to the launch of our fall schedule, if we get the approvals we're looking for here today, so we can round out our schedule, get our advertising sales back up and running, and that will cost a lot of money.
Q. Does the company have revenues?
A. Yes.
Q. So if revenues are sufficient to pay the expenses, you're not going to borrow money?
A. But they're not; they're insufficient.
Q. You'll just borrow to cover the deficiency?
A. Correct.
Q. And does this projection of yours show what your deficiency is next week?
A. You mean on a weekly cash?
Q. Yes.
A. Yes. I mean, I don't have it done in my head or

memorized, but yes.
Q. Do you have any idea how much money you intend to borrow next week under the DIP?
A. To borrow --
Q. You've got forty-four million in the bank today, is that correct?
A. Yeah, we would like to be able -- I mean, I can -- I feel like I'm repeating myself but I'll say it again, we would like to borrow immediately seventy-five million dollars. I think we're using the term similarly now.
Q. Well, I don't --
A. And so we can --
Q. Well, it sounds like you're saying you want to have the availability, but I'm not yet hearing what you want to borrow the money for?
A. No, it would be funded. In other words, it would be funded. If we would borrow it, it would be -- it would be in our bank account so we can transact with the people who have stopped transacting with us several months ago.
Q. So you will have 100 million dollars borrowed under the DIP?
A. Which will then decline as this process plays out and as we spend money for marketing and programming and everything we haven't done over the last couple of months.
Q. And you don't anticipate paying that 100 million dollars

or any part of it back in the next year -- during this year. Is that correct?
A. I can't answer that. It depends how this process plays out.
Q. All right.
A. You know, that's how -- my understanding is, that's what this whole plan process will be about, to figure out how the company will emerge with what levels of debt or equity or whatever. You know, I don't know.
Q. Now, the money that you're going to borrow is going to be used to fund the operating shortfall in the business. Is that correct?
A. Yes, that's correct.
Q. Okay. Is it going to be used for any other purpose?
A. I'm not su -- help me. What do you mean, any other purpose? I mean --
Q. I mean, any other purpose?
A. I'm not sure I know how to answer that question.
Q. All right. Do you know which of these entities are license subsidiaries?
A. Typically the ones that have "license" in their name.
Q. And do those entities have any business activities other than holding the license?
A. I believe that is -- they are special-purpose companies to hold the license.

Q. Do they grant sublicenses to their station affiliates?

A. Sublicenses to their station affiliates. I'm not sure I know -- what does that mean?

Q. Do they -- let me ask it differently. Do they collect a royalty for permitting their station affiliate to use the license?

A. Do they collect a royalty for the station -- I'm not sure what you mean. Let me -- let me --

Q. Do they get paid anything by the operating companies for the operation of the business, since they hold the licenses?

A. Let me explain how --

Q. Just a yes or a no, please sir.

A. I don't know.

Q. You don't know?

A. I don't know. I mean, the question is not phrased the way our business works. I can help you -- explain to you how our business works so I can answer in a way that I can answer the question.

Q. Well, I'm going to ask the questions, and the idea is you're going to answer the question or --

A. Okay.

Q. -- tell me you don't know.

MR. SERINO: Objection. That's unnecessarily argumentative, Your Honor. The witness is trying --

THE COURT: I agree. It's unnecessarily

argumentative. And I wanted actually the answer to the question that the witness was attempting to answer that you don't want him to answer. So when you're done, I'm going to ask him the question, so I find out.

MR. LAURIA: Your Honor, I'm not trying to prevent him from answering. I'm just trying to make my cross examination as brief as possible by trying to focus him on the questions I'm asking, and not the stuff he wants to answer.

THE COURT: Well, he was making it clear --

MR. LAURIA: His counsel can --

THE COURT: -- he was making it clear to me that the question as phrased did not prompt a response that was consistent with his understanding as to the relationship between the license subsidiary and the operating subsidiary. And he was going to tell you what it was, but you didn't seem to want that answer.

MR. LAURIA: Well, I would like to ask some questions about that, actually.

THE COURT: Why don't you ask the questions, then.

MR. LAURIA: All right.

THE COURT: And we'll ultimately find out the answer that I want to know. Because before this is over, I'm going to ask that question.

MR. LAURIA: Your Honor, this is not hide and seek.

THE COURT: So go ahead, ask the question.

MR. LAURIA: All right.

BY MR. LAURIA:

Q. So earlier, you testified, I believe, that for a particular station, you have two legal entities: an operating company that operates a station; and a special purpose company that holds the license. Is that correct?

A. Yes, sir.

Q. And what I'd like to know is, does the operating company that's operating the station, pay a royalty to the special-purpose company that holds the license?

A. No.

Q. Okay.

A. And eventually, hopefully, I can be able to explain how this business works. But the answer to that specific question as phrased, which in my opinion is an inapplicable question, is no.

Q. Well, let me ask you, the special-purpose company does hold an FCC license, right?

A. Yes.

Q. And the operating company operates the station, correct?

A. Yes.

Q. And I'm just trying to understand, does the operating company compensate the license company for operating the station under the license?

A. I understand. And I don't -- and I'm wondering how many

more times you're going make me say that that concept is inapplicable for the business we are in.

Q. You know, it's still a yes or no answer, whether it's applicable or not.

A. No. The answer to your inapplicable question is no.

Q. Okay. Thank you. Why is my question inapplicable?

A. Because -- so, can I now explain how the business works? So there are enormous costs associated with maintaining those licenses. All right. In other words, there are a whole litany of things you have to do to have the licenses in so-called good standing, which you asked about earlier. If you don't do any number of those things, you're in default, and you're not going to get your license renewed, or you're going to get them withdrawn from you. All right. These things include the most fundamental things, like you have to broadcast an MPEG2 signal, digital, twenty-four hours a day. It's very, very expensive to do that. You have to provide a certain number of hours of kids' programming every week for every feed you do, whether you like it or not. You have to employ a minimum number of employees at the local level. You have to man a studio in the city of license. So those are the things that constitute our budget. Ninety percent of what we do is to sustain those licenses. And so --

Q. And if you can't sustain the license, what happens?

A. -- and so the question should be, is the license company

paying the operating company. The answer to that is no, because we manage the business as an integrated business. That's the way we inherited the business, and that's how our business model functions.
Q. Okay. Now, you just made an interesting statement that I want to ask you about. You just said, the question should be does the license company pay the operating company. Was that your statement? Did I hear that right?
A. Well, I'm saying there is no -- that the license company doesn't have costs in it that effectively would be necessary to maintain that license, because we operate it --
Q. Does the license company get any revenue?
A. The license company does not get any revenue, no, it does not.
Q. Well, if it doesn't get any revenue, why would it pay anybody anything?
A. All I'm trying to alert you to, the maintenance of a license, effectively, is a cost center.
Q. But the maintenance of a license is for the benefit of the station, right?
A. All I'm saying is if you -- I'm just trying to explain that, you know, there's various ways you can configure -- you can configure your business. If -- the pure maintenance of the license is a cost center.
Q. Who benefits from the maintenance of the license?

A. Depends what you do -- it depends what you do with the license.
Q. Well, you're operating TV stations right now. Who benefits from the maintenance of the license?
A. Yeah, so in our case, we -- the license is ultimately what gives -- what is the basis for the way we get distribution. So that's how we generate advertising revenue; that's how we reach homes. So basically, the license is basically enabling the future, for us, and we -- and that's how the business operates.
Q. Now, do these licenses, by the way, have value, separate and apart from the operation of the business?
A. That's an interesting question. That's -- it's unclear in this environment. And this is something the financial advisors can at some point expand upon. But in the current economic cycle, there have been various cycles recently where so-called licenses were for sale and transactions have not occurred because the times where people buy licenses and build a station around it are not as -- are few and far between. In other words, you know, the market for broadcast assets is a significant change from what it was historically. So currently, there's really no market for just the licenses.
Q. All right. So --
A. What I mean -- let me add one thing. For example, that's what I meant when I said some of the low powers aren't even built. So there is actually questionable value right now as to

whether it is actually financially sensible to build a license in and of itself as a standalone concept.
Q. All right.
A. All right? So we view the licenses as integrally as part of our business.
Q. Now, you have heard of auctions for FCC licenses, correct?
A. Yes.
Q. Yes. And they have in the past brought money. Is that correct?
A. Yes.
Q. Yes. And isn't it true that the price of the license is more a function of the market that the license would authorize the broadcaster to broadcast into than the business, if you're not affiliated with a major network?
A. That's -- I'm not sure I can answer that question. All I'm telling you is, it depends. It's no longer as clear as it used to be. We've had -- you asked earlier whether we have sold stations recently in my job. And we haven't. But it's not like there haven't been stations available that we would have been willing to sell. And the market for stations just hasn't been there. In other words, we've had stations in Boston for sale for some time, and we haven't even gotten any offers on them. So it's unclear right now, actually, how the marketplace for so called stick licenses actually works.
Q. All right. Now, earlier you testified that there were no

board meetings of any of these subsidiaries other than the parent. Is that correct?
A. Yes.
Q. So is it fair to say that those subsidiaries have not made any business decision about the appropriateness of the DIP financing?
A. Well, I --
Q. Just yes or no, sir?
A. Could you rephrase the question?
Q. Is it fair to say that those subsidiaries, whose boards have not met to consider the DIP financing, have not made any decision regarding the appropriateness of the DIP financing?
A. Well, let me give you my point of view, and then you can tell me whether --
Q. It's just a yes or no. Your counsel can ask you to clarify on some redirect.
A. No. No, and I don't think it's a fair statement.
Q. Pardon me?
A. I don't think it's a fair statement.
Q. It is not a fair statement?
A. I don't believe it's a fair statement.
Q. In other words, an entity whose board didn't meet to consider the DIP, nevertheless determined that the DIP was appropriate for it?
A. Well, I tried to expand on the answer, you didn't let me,

sir.

Q. I'm just looking for yes or nos.

A. I can't answer the question.

Q. You cannot answer that question.

A. No.

Q. Are you aware of a way that a corporation takes action other than through the act of its board?

A. No.

Q. Now, you currently have content on the air on all of your stations. Is that correct?

A. Yes.

Q. And you have commitments to provide that content into the future. Is that correct?

A. Commitments to pro -- how do you mean?

Q. The content that you are currently broadcasting, you have the right to continue broadcasting that throughout the rest of the day today. Is that correct?

A. Today?

Q. Yes.

A. Yes.

Q. And tomorrow?

A. Yeah, but not much beyond that.

Q. How about next week?

A. It gets tight.

Q. You don't have the right to continue broadcasting your

content into next week?
A. We're short content, is what I'm trying to tell you.
Q. All right. Just explain what that means, short content?
A. We are -- in our business plan and belief we have to revitalize the company by broadcasting more content, better content, soon. And we are deficient in the quantity and quality of content we need to do that.
Q. Well, you're in the process of changing your business, aren't you?
A. Changing the business?
Q. Yes. Aren't you going from primarily from infomercial-based content to a different format?
A. No. I mean, we're -- I mean, there's a -- no.
Q. So I thought you just said that you didn't have the kind of content that you needed to implement your plan?
A. Well, the issue is that the company, because if its financial problems, has gotten itself into the anomaly of relying on infomercials more than historically it ever had wanted to, and we will try to rectify that anomaly. But there's nothing new about what -- new or novel about what we're proposing.
Q. You're trying to rectify the anomaly of not having enough commercials?
A. No, of not having enough entertainment content on the air. There's not any other network in this nation that you'll find

who has the ratio of programming content/infomercial that we temporarily have. And we need to fix that.

Q. What is your ratio of infomercial/content?

A. When I inherited the job, we started at something like nineteen hours. Going back in history, it was much less than that. When the company was actually still producing and had the money to do content, at that point it was more like ten hours a day. So we have to get back to at least some kind of a balance between the programming and the infomercial side.

Q. What do you mean when you say nineteen hours?

A. I'm sorry?

Q. What do you mean when you say nineteen hours? Do you mean nineteen out of twenty-four?

A. Yes.

Q. And do you broadcast all twenty-four?

A. Yes.

Q. So nineteen hours of infomercials and five hours of other kind of content?

A. Correct.

Q. And what is the other kind of content.

A. Well, I'm sorry, I forgot to say part of my answer. So, when I started it was nineteen hours. We've got it back slightly over the last couple of years. It's now seventeen or so on weekdays. And so we've reduced it slightly, but we have a long way to go.

Q. Now, when you broadcast an infomercial, do you pay for the infomercial, or does the infomercial sponsor pay you?
A. Typically the infomercial sponsor pays a rate that is below the amount of money that you would otherwise make if you had good content on the air.
Q. But they do pay you?
A. Not enough to cover our costs, but yes.
Q. And when you get commercial content, you have to pay for it. Is that correct?
A. Yeah, because you have higher revenue if you get a rating on the air.
Q. So you don't need DIP financing to get infomercial content, correct?
A. We need DIP financing to sustain our business.
Q. Okay.
A. Okay?
Q. But that is not the question that I asked you, sir.
A. Okay. All right. So what's the question?
Q. You don't need DIP financing to get infomercial content, correct?
A. The technical answer to that technical question is yes.
Q. All right. So you're saying that today about seventeen hours of your twenty-four hour day are infomercial content, right?
A. Approximately, yes.

Q. And you're saying that the revenue that you get from infomercial content is insufficient to cover your operating expenses, correct?

A. Overall, yes.

Q. So you need to borrow money to make up that shortfall. Is that correct?

A. We need to -- Tom, we -- the cable companies don't distribute us for infomercials. All right? So if we want to sustain our business, we need to credibly explain that we are a programming channel. If not, we will not be able to justify our distribution. And --

Q. Sir, that's interesting, but it's not the question I asked.

A. Okay.

Q. All right. I just asked if you need -- if the borrowing you need to make with respect to your infomercial content is simply to cover any shortfall in operating?

A. It is to -- and it is to acquire the content to program those hours.

Q. Well, wait a minute. Do you have to pay to acquire infomercial content?

A. No, we have --

Q. I thought your testimony was that they pay you?

A. Maybe I misunderstood the question.

Q. The infomercial provider doesn't pay you to put his

program on your station?

A. No, I had already answered that previously by saying that the technical answer to the question about the infomercial, that's not what the DIP is for. The issue is --

Q. I'm just asking it for the truth. I don't know what this technical answer stuff means.

A. Okay --

MR. SERINO: Objection, Your Honor. He's not letting the witness finish his responses to the questions.

THE COURT: I'm going to sustain that. And frankly, while we're always looking for the truth in this court, it isn't particularly helpful to say that unless I'm saying it.

MR. LAURIA: Okay.

THE COURT: It's the kind of histrionics that frankly don't play well with me.

MR. LAURIA: Your Honor, I am not trying to use histrionics at all here.

THE COURT: Then don't approach the witness with that kind of demeaning question.

MR. LAURIA: Well, Your Honor, my problem is, is that he's answering questions to suggest that he's not really answering the question --

THE COURT: I'm listening to everything that you're saying and he's saying, and so far, I haven't heard cause for you to move in the direction you just moved.

MR. LAURIA: All right.

THE COURT: I sustain the objection.

MR. LAURIA: I apologize, Your Honor.

THE COURT: And let's try to get to the truth, right now. And efficiently, please.

MR. LAURIA: Yes. I understand, Your Honor.

BY MR. LAURIA:

Q. As you are currently operating, your stations are carrying about seventeen hours out of a twenty-four hour day infomercial content. Is that correct?

A. Approximately, yes.

Q. And you do not provide payment to the providers of that content to broadcast it, correct?

A. Correct.

Q. And is it true that one of the reasons that you want to have access to the DIP financing is that so you can buy more commercial content?

A. Do you mean programming?

Q. Yes.

A. Yes.

Q. And you are -- you developed a plan to do that. Is that correct?

A. Yes.

Q. And when did you develop that plan?

A. Over the course of the last year.

Q. Is that a plan that's been vetted during the pendency of this Chapter 11 case with any of your stakeholders?
A. Well, it sure feels so, you know. We've gotten three proposals against it, so.
Q. Three proposals -- I'm sorry. You had three proposals for?
A. Well, in terms of all these proposals that we're looking at, I mean every -- we've done a lot of due diligence with the parties that are -- many of which are in this room, and we have to explain what we're doing, why we're doing it, why the revenue mix we're in is almost fatal given the revenue market erosion, and why we think, with a prudent programming strategy, we will create better value over time.
Q. Well, let me ask you something, so you're talking -- when you say the three proposals, that's the three DIP proposals. Is that correct?
A. I --
Q. Are those the proposals you're referring to?
A. Whatever the proposals are that we're here to discuss. So in other words, there's the first lien group and the second -- the first lien group and all that -- so, yes, we've had a lot of diligence discussions. We've discussed it with our board. We've modified the assumptions. You know, they get modified in real time, as the marketplace continues to fall off a cliff. We just took our revenue projections for the infomercials down

for another 5 million last week. It's dynamic. But yes, I believe we have been prudent and diligent in thinking it through.
Q. All right. So you testified earlier that your intention is to borrow and have on the books 100 million dollars under the DIP financing, correct?
A. Correct.
Q. And you testified earlier that you believe that at the end of the year you'll have, did I understand it to be 60 million dollars of cash on the books?
A. I believe I said 30 -- just over 30.
Q. Just over 30? So at the end of the year, the net cash position would be that you would owe 70 million dollars under the DIP. Is that correct?
A. No, I think 100. Because we have drawn 25, we get another 75, it would be 100 million dollar borrowing in total.
Q. Right. But you would have 30 million cash in the bank?
A. Yeah. Of working --
Q. And I'm just saying --
A. -- of working capital.
Q. -- your net borrowing would be 70 million?
A. I suppose -- well, I suppose.
Q. So, now, is there any possible scenario under which the assets of this company are not worth 70 million dollars?
A. I don't know. I mean, I'm not sure I want to speculate on

valuation at this -- I don't know.

Q. Do you have any view that the value of the company is anywhere near 70 million dollars?

MR. SERINO: Objection, Your Honor. I think that calls for expert testimony at this point. It's premature and incomplete, hypothetical. I could go on.

MR. LAURIA: In fact, the debtor can always testify as to his view of the value of the company.

THE COURT: We're not talking about a house, we're talking about a complex enterprise. This witness has not been qualified to provide any testimony with regard to value, and I sustain the objection.

MR. LAURIA: Okay.

Q. Do you believe there is any material risk that the DIP will not be repaid?

A. I don't know the answer to that question.

Q. Did you get an appraisal regarding the value of this business at the end of 2008 from BIA?

A. Yes.

Q. And what was the amount of that appraisal?

A. The amount of that appraisal under that methodol -- under the BIA methodology, was 1.7 billion dollars on this very theoretical approach that they were asked to take under our indentures.

Q. And who is BIA?

A. It's a broadcast -- I don't know what the acronym stands for. It's a broadcast appraisal firm.

Q. It's a recognized appraisal firm in the industry, is that correct?

A. I suppose so.

Q. What is the purpose of the annual BIA appraisal?

A. It was a -- it was a process we inherited as part of the financing that was in place at the company, the secured financing. And it called for an annual appraisal to be done under a very specific set of assumptions on how to value the stations, that predated me. And so that was a very, sort of, formulaic way they went about this every year.

MR. LAURIA: Thank you.

THE COURT: Redirect?

MR. SERINO: May I, Your Honor?

THE COURT: Absolutely.

MR. SERINO: Thank you.

THE COURT: Before you do, though, I have a feeling that there is someone on the telephone line with an unmuted phone rustling papers.

UNIDENTIFIED ATTORNEY (TELEPHONIC): I apologize, Your Honor. I realized the mute had got off. I will put it back on.

THE COURT: Thank you.

UNIDENTIFIED ATTORNEY (TELEPHONIC): Caryn Chalmers (ph.) from Sonnenschein, counsel for Sony Pictures Television.

THE COURT: You didn't have to identify yourself.

MR. SERINO: May I proceed, Your Honor?

THE COURT: You may.

MR. SERINO: Perhaps I should introduce myself for the record. I'm Joe Serino, debtors' counsel.

REDIRECT EXAMINATION

BY MR. SERINO:

Q. Good afternoon, Mr. Burgess. There seemed to be, I think, some confusion about what you will do with the DIP money if you're fortunate enough to have that motion granted today. Can you just explain to us simply in your own words what you intend to do with that money?

A. Yeah. We want to build an entertainment network, which is what the company's original plan was, until it got itself into some financial constraints. It always was the plan. It was never the plan to be anything other than that. We hope we have a -- we think we have a better approach. We target broad audiences the company had historically been able to reach. We are on our way in doing that. Our ratings are up a hundred percent, even with the limited amount of monies we've had. But now, I'm sort of running out of gas on continuing the strategy, because I'm running out of content. It's a severe issue for me.

Q. Can you tell us what you mean by that? What do you mean

by content and running out of content?

A. Well, we have not started to be in the position yet to produce our own content or commission our own proprietary content. We -- if we're really going to be successful, we're going to have to do some of that. We're beginning to do some of that, even with the DIP financing that we're asking for. But the bulk of what I need to have happen now is we have to license from the studios -- and I'm glad to hear that Sony is on the telephone -- good content. Because we know it works. We know ratings go up when you put good shows on the air. Now, we just have to make it affordable so we don't bite off more than we can chew; calibrate the mix between infomercials and advertising sales, which is prudent in light of the fact that infomercial revenue and pricing has gone down six to ten percent year over year over year since almost the year 2000. And we've gotten hit harder than anyone, because we have no defense, because all of our inventory is in it. So, you know, and I think, frankly, there's nothing particularly scientific about what we're doing. I wish I could tell you this is -- we're doing a new Mousetrap, but this is basically using distribution which is pretty robust, putting programming on the air that's good cont -- good programming, and getting ourselves in the advertising sales business more so than we have over the last twelve to eighteen months.

And the budgets that we're working with are, frankly,

modest, compared to some of those budgets that our competitors have to work with. So I think we're being prudent about how we're approaching it. And I could easily be sitting up here asking for more money, but that may not be appropriate under the circumstances.
Q. You mentioned infomercials in your response, and we heard a lot about that when you were questioned by counsel. When you talk about going out and acquiring content, are you talking about acquiring more infomercials?
A. No.
Q. What kind of content are you talking about acquiring?
A. Well, entertainment --
Q. Give us an example?
A. -- entertainment program. You know, we want to be, generally speaking, a general entertainment service. People watch television shows, they follow television shows. And our approach is no different from the approach that My Network TV is taking or that Bravo is taking or TNT is taking, except we're going to move a little bit more modestly in the early years. But ultimately, we want to grow up to be top-ten network in the United States.
Q. And do you have a view or a judgment as to what would happen to Ion's business if you broadcast infomercials twenty-four hours a day?
A. It would be a very adverse result, from my perspective.

It would -- any way you look at it. The -- currently we reach about 100 million homes, which is -- puts us right up there with the best in class in terms of reach. And some of that reach we get -- not all of that reach we get through our stations. We get a lot of that reach through satellite and cable companies who are carrying us, not because they like infomercials, but because they want us to put audiences in front of the screens. And, you know, I've been able to sort of beg and steal over the last twelve to twenty-four months to get some of those deals renewed, but under a commitment that we will do a better job programming the network. And so far, so good.

We've been fortunate that we've been able to protect and slightly grow that distribution, but now we have to put our money where our mouth has been, or else, they will eventually stop carrying us, as they frankly, from my perspective should, if we don't do a better job. And, you know, those homes, it's about 30 million homes that we're doing basically on a contractual basis, that are sort of unrelated, if you will, to our broadcast status. It's what we call wide-area distribution.

Q. Fair enough. Let me change subjects and talk to you about FCC licenses. Do you recall some questions about that a while ago?

A. Oh, the other -- no, let me --

Q. When counsel was talking to you about FCC broadcasting?

A. No, no. Let me talk some more about your prior question.

Q. Please.

A. All right? The other thing, by the way, that happens, is eventually --

THE COURT: If Mr. Lauria were asking the questions, he'd stop you.

MR. LAURIA: I'm here sir, too, for the truth. I can't win either way, can I?

A. No, I want to come back to something that was said earlier, which I took objection to, which is that somehow we are not taking good care of our licenses, okay? That is something I take personal offense with. It's what we do, okay? I spend countless hours at the FCC in negotiating kids' programming and everything that goes with the licenses. And something to make clear, infomercial programming does not help the FCC licenses. Okay. It's important to understand that. And so, I'm sorry.

Q. Fine. Fair enough. In your testimony, in response to Mr. Lauria's questions, you said, and I wrote it down, that there are enormous costs maintaining licenses, and if not complied with, you can lose the licenses. Who bears those costs? Who pays for that?

A. Well, the company does. Is your question whether we -- how they get funded? Well, we effectively -- we -- I don't

know who "we" means anymore with all these nuances that you guys are introducing, but we, Ion Media Networks pays all the bills. Our operating budget to operate the stations excluding people costs is sixty, seventy million dollars a year. That's all for the licenses. That's before you get to programming. Forget programming, okay. On the FCC license you have to put a signal on the air 24/7 under a certain power level, 24/7 on a MPEG-2 ST basis. That's very, very expensive to do, you know. Two-thirds of our employees are employees for the station purposes. Because we have to employ that many people to maintain sixty broadcast stations. All the salaries get paid by -- I guess the DIP financing. So it's very integrated and you really have to understand that to under this business and what we're trying to accomplish here.
Q. And are there any consequences to the license if Ion is not able to pay those bills?
A. We're in default.
Q. In default?
A. I mean if you go off the air for more than ten days we have to first ask for permission to do that. And if you stay on -- off the air long enough, eventually you'll get an automatic withdrawal of the license.
Q. And if the DIP proposal is approved, will those proceeds play any role in helping Ion pay for those license expenses?
A. Well, yes. I mean it all goes towards our operating

budget, holistically. When I gave you that 130, that is to fund our business, you know. I don't -- that's content -- it's not just content; as I say, our 2009 operating expense is going to be something in the seventy million plus HR costs, which goes to the station employees.

Q. And if Ion can't pay the bills such that there's a default on the license or the license is lost, revoked, not renewed, whatever, what effect, if any, does that have on the value of Ion's business?

A. It would be very adverse.

Q. How so?

A. Because -- until we do a better job -- it's all circular, until we do a better job getting a rating and programming on the air that means something to people, the only way we can maintain our carriage in a lot of these markets is by being a broadcast and having a statutory right to ask cable and satellite to carry us in markets where we have stations. So without being able to rely on that, there's nothing to work with here.

Q. Now, Mr. Burgess, are you a director of some of the subsidiaries or all of the subsidiaries?

A. Thank you, finally get to it. Yes, I believe I'm a director in all of these entities. And if you ask me whether this is a good idea of marching forward and getting the business funded corporately, I would say it's a very good idea including for the license companies. That's my personal opinion. So I leave it Mr. Lauria to determine whether he thinks that's fair or not.

Q. Do you know whether you happen to be the sole director of all of these entities?

A. I don't know that. I think there are other directors. I don't know exactly who they are. I think Jeff Quinn is a director and most -- or all of them -- I think there's two or three directors in each of these entities.

Q. Have you been present at all the parent board meetings to discuss what's going on in these reorganization proceedings?

A. Yes.

Q. And have you entered into or signed any consents to the DIP proposal that is the subject of this motion here today in your capacity as a director?

A. That's --

Q. If you know?

A. Have I what?

Q. Have you signed any consent to the DIP proposal that is the subject of the debtors' motion here today in your capacity as a director of these entities?

A. I don't -- no, I don't think so. Is that a trick question?

Q. Yes, that's fine. Let me just cut to the chase. Why do you believe the company needs this DIP financing?

A. Well, so we can operate and hopefully pursue the plan we put forth that the majority of our lenders have taken a look at and seem to be expressing support for. And which in my humble opinion will be value enhancing over time. I mean it may not be immediate but over time we will have a better asset, a better company. And I can't do it without some working capital.

Q. Okay. Why do you believe that the company needs that working capital today?

A. Well, we have -- you know, outside of this courtroom, we're in the real world; we're trying to sell advertising. We're in the middle of an advertising selling season that starts in May. And the way it works is it's like a food chain, right? The big guys get to go first; NBC, CBS those guys. They get to go first. Top tier cable goes second and we eventually get to participate. And what happens is, the advertising gets sold forward. So right now, over the next four to eight weeks, would be when discussions to sell advertising starting the fourth quarter through the third quarter of next year. And right now as we sit here, our advertising sales team doesn't know what it is selling because our schedule for the fourth quarter hasn't been finalized. It has a bunch of holes in it because we would like to buy some more content. I think we can buy some more content very, very quickly, which will be viewed as positive by the marketplace

and then we can proceed and implement our plan and sell advertising at rates that are going to be a hell of a lot better than direct response and infomercial rates.

Q. Thank you. Just one follow-up question on licenses. If the situation you talked about comes to fruition and you lose a license, can I and thereafter sell that license --

A. No.

Q. -- once it's been lost?

A. No.

Q. Thank you.

A. I don't believe so. I don't believe so. I don't I've ever encountered that but I don't believe so.

MR. SERINO: No further questions, Your Honor. Thank you.

THE COURT: Mr. Lauria, do you have anything further?

MR. LAURIA: Yes, I do.

RECROSS-EXAMINATION

BY MR. LAURIA:

Q. You just testified that the -- that you spent sixty to seventy million dollars a year maintaining the licenses, is that correct?

A. The activities that are associated with doing the things that we have to do as a license holder, yes.

Q. Right. Now, when you pay that sixty to seventy million dollars, you must believe that what you're getting in return is

worth more than that, correct?
A. I mean if you ask me whether I believe in our business as opposed to shutting it down, yes, I believe in this business.
Q. You wouldn't spend sixty to seventy million dollars maintaining licenses that you thought were only worth a dollar, for example?
A. I'm not sure I know the answer to that question. What I said, I think, is that we need our licenses to build a cable network, you know, a cable hybrid network across the United States. I can't do it without the stations. And so I think it is a good idea, yes, to support as inexpensively as we can the cost associated with doing everything we need to do for FCC purposes to maintain those stations. Pay the utility bills, pay the employees, do the local community programming, all those sorts of things.
Q. Now, you're -- you just testified, also, that your intention is to increase the entertainment content that you're broadcasting, correct?
A. Improve the quality and the quantity of it, yes.
Q. Right. And if you were unable to do that -- if you were unable to do that, would you continue at the current level between infomercials and entertainment content? If you were unable to increase?
A. If I was -- I'm not sure. I'm mean, we're in bankruptcy because we have a problem, so I'm not sure I know how to answer

that question. I mean do I think we have a sustainable basis right now with what we're doing, no.
Q. That's -- that was not what I asked. I was not asking if you had a sustainable business, what I asked is if you were not able to increase the entertainment content, would you continue broadcast -- would you continue broadcasting for now the infomercial content?
A. As a hypothetical, I suppose so, yes.
Q. And you're currently broadcasting sufficient and appropriate content to maintain your licenses, correct?
A. That's actually a very interesting question. That's a very interesting question.
Q. Well, let's start with a yes or a no and then we'll go for the explanation. You're currently broadcasting what you need to broadcast to maintain your licenses, correct?
A. As -- yes, as a technical matter, I suppose yes.
Q. All right. And, in fact, you earlier testified that you think of your fifty-nine full powered TV stations, all of them are in good standing with the possible exception of one, which is in D.C., correct?
A. Correct.
Q. And there you're just in the process of renewal, correct?
A. Yes.
Q. All right. So it's not been suspended or in any kind of penalty status, is that correct?

A. Not currently.
Q. Not currently. And that's true as to all fifty-nine of your full-powered TV stations, correct?
A. Well, yes, with the exception of the Washington issue, I guess.
Q. So back to this issue of what you're spending to maintain the licenses, you're spending sixty to seventy -- is that your testimony, sixty to seventy million dollars a year to maintain the licenses?
A. Yes. I mean our operating budget, which by and large excluding programming, is by and large the station operation cost. And then there's ST&A and those sorts of things above and beyond that. But yeah, I believe it's roughly that neighborhood.
Q. Well, it's true that some of your stations you could actually broadcast less entertainment content and still maintain your license; isn't that true?
A. That's the point I was trying to say to you; that's an interesting question. Because at some level, I think you actually jeopardize your standing by doing just that. That's my subjective opinion, but I'm not the expert.
Q. That's not the FCC's opinion, correct?
A. Well, that's an interesting question, right. There was a recent case that came to my awareness where, you know, a station was challenged, you know. Remember, any consumer can

challenge any license, anybody, just you write a letter. And somebody who challenged a local station, recently, about running a male enhancement product, infomercials, in -- during primetime viewing hours. So it's a slippery slope, you know.
Q. Well, that's a matter of the content being offensive, correct?
A. Yeah, but it's a matter that, basically, that the way you get into bad standing is not just an FCC examination. If someone mails in an objection, you know, you're exposed. And so we have tried to walk the line as carefully as we can to minimize our cost structure. We don't do, frankly, a lot of local programming, you know. If --
Q. You don't show the male enhancement infomercials until late at night, is that correct?
A. That's correct.
Q. All right.
A. It's funny you say that, actually. I was watching here in New York last night and what do I see at 12 o'clock, Extends. I'm not sure that's a great way to maximize value. I think it's very risky.
Q. All right.
A. Very risky.
Q. But there are FCC rules about when you can broadcast that type of content, is that correct?
A. Yeah, but they're not that reliable.

Q. Do you follow them?
A. We -- yes. Well, we try to follow them as much as we can. There's been a lot of definitional issues in terms of what's broadcast standard in recent years.
Q. Do you have any pending complaints to terminate any of your FCC licenses?
A. Not to my knowledge, no.
Q. And certainly not because you're broadcasting too many infomercials?
A. Not at this time, correct.
Q. Have you ever had any?
A. Complaints?
Q. Because you're broadcasting too many infomercials?
A. Well, I can't answer that ever. Under my watch, I think we've been okay.
Q. Okay. That's no? That's a no?
A. As long as I've been at the job, I guess it's a no, yes.
Q. Thank you. You testified that you thought it would be an adverse result, from your perspective, if you were unable to increase your entertainment programming, correct?
A. Yes, right.
Q. And why is that?
A. Well, I mean because my point of view is that we can build a business that will be self sustaining and valuable over time and I don't believe we can do that doing what we're currently

doing which is different from, frankly, what even the company had intended to do when it first started.
Q. Now, against that backdrop, have you received any expert advice regarding the liquidation value of your licenses?
A. Not recently.
Q. Not in connection with your decision to file Chapter 11?
A. That's correct.
Q. And not in connection with your decision to enter into this DIP financing, is that correct?
A. That's correct.
Q. All right. When's the last time you received a liquidation analysis regarding the value of your licenses.
A. I don't know that up in this -- up until this date we've looked at liquidation of the company, to my knowledge.
Q. So you haven't considered what would be recovered in a liquidation of the licenses?
A. Well, I mean you said "expert advice". I mean we have discussed it as a general matter among the advisors as we -- thinking through how to position the company better and the general view -- again, Moelis can speak to this probably better than I can when the time comes, but the general view is that this is not a good market for liquidating broadcast assets and that this may actually be a good market for making a countercyclical programming move on the rating side. And so far our performance seems to bear that out.

Q. You wouldn't want to liquidate the business, would you?
A. I'm not sure that's my decision.
Q. I'm just asking if you would want to liquidate the business?
A. I think it would be a suboptimal outcome for the enterprise.
Q. Would you have a job if the business was liquidated?
A. I'd find a new job.
Q. But you wouldn't have this one?
A. I suppose not.
Q. Right. Thanks.

THE COURT: Anything more?

MR. SERINO: No further questions, Your Honor, thank you.

THE COURT: You're excused, thank you.

THE WITNESS: Thank you.

THE COURT: Is there more?

MR. LAURIA: Cross-examine Steve Panagos. He's been sequestered. Should we get him?

MR. SERINO: Your Honor, if I may, I'll go get him.

(Pause)

THE COURT: Mr. Panagos, why don't you come forward?

(Witness sworn)

THE COURT: Please be seated.

CROSS-EXAMINATION

BY MR. LAURIA:
Q. Mr. Panagos, my name's Tom Lauria. I'm with White & Case. I represent a second lien lender in the case here. You are currently retained by the Ion debtors is that correct?
A. Yes.
Q. What is your responsibility?
A. I am the lead restructuring managing director working on the engagement.
Q. Managing director of what firm?
A. Oh, I'm sorry, of Moelis & Company.
Q. All right. And what's the scope of Moelis' assignment?
A. To assist the debtors in pursuing a plan of reorganization and restructuring of their debts which includes a variety of activities inclusive of getting DIP financing for the company.
Q. What are the terms of Moelis' compensation scheme with the debtors?
A. There -- it's a monthly retainer plus a back-end success fee.
Q. And what's the amount of the success fee, please?
A. To be honest with you, the dollars, I don't know in my head. I would have to refer to --
Q. Do you have an idea?
A. Plus or minus five million dollars.
Q. Plus or minus five million.
UNIDENFIED SPEAKER: Your Honor.

THE COURT: Mr. Lauria, I don't mean to intrude on your examination, but I'd really like you to get to the point. It's late in the day. Please focus on the issues that I should really be hearing as part of your proof in support of your objection. His compensation arrangement seem to me to be quite far afield.

MR. LAURIA: Well, Your Honor, I guess I would argue that --

THE COURT: That's the subject of the U.S. Trustee objection as well.

MR. LAURIA: And I --

THE COURT: Issues relating to the Moelis engagement are not presently in front of me.

MR. LAURIA: I'm not objecting to the Moelis engagement, I just want to make the point of --

THE COURT: Fine. Please, get to the point, that's all I'm saying.

MR. LAURIA: -- that an expert --

THE COURT: Please get to the point.

MR. LAURIA: Well, I had a point, Your Honor.

THE COURT: What is it?

MR. LAURIA: When an expert is going to be paid for success that goes to the bias of the expert in his testimony.

THE COURT: Why don't you go to that at the end and I'll just assume that he is a retained expert eventually. At the moment he's not. At the moment, Moelis has a pending application. What they've done in this case remains to be seen. So your questions are premature and also irrelevant.

MR. LAURIA: Well, Your Honor, I'm struggling. If he's -- if I can't treat him as a retained expert, I'm not even sure what he's offering his opinion for.

THE COURT: Well, he is a party who has a pending application in front of the Court. The same way that if you were committee counsel -- as committee counsel that's in front of you right now with a role in the case, she's proposed committee counsel but she's not yet a retained professional. She's hoping for the best as I suppose is this witness.

MR. LAURIA: All right.

BY MR. LAURIA:

Q. What is the scope of Moelis' responsibility with respect to the debtors?

A. As I previously stated, I mean there is a long series of specific items in our scope, but they are inclusive of helping the company -- advising the company in seeking a reorganization of their -- of their balance sheet.

Q. In connection with your retention, have you had an opportunity to review the various DIP financing proposals that the company has received?

A. Yes.

Q. All right. And you initially offered testimonial support

in support of the original DIP proposal, correct?
A.   Yes.
Q.   All right. And that was a proposal that included 150 million dollar rollup, correct?
A.   Yes.
Q.   And your testimony was that that was the best financing available, correct?
A.   At the time, yes it was.
Q.   Right. But it's not the best financing available, it turns out, right?
A.   That is correct.
Q.   All right. And, in fact, the terms of financing have been materially improved, correct?
A.   Yes, they have.
Q.   And that's a result of competition?
A.   Yes, it is.
Q.   All right. And are you aware of the proposal that my clients submitted?
A.   Yes, I am.
Q.   And you would agree that that proposal from an economic prospective alone is a superior proposal?
A.   Yes.
Q.   Have you performed any valuation analysis with respect to the debtors' business?
A.   Not yet, no. Nothing formal.

Q. Have you performed any liquidation valuation with respect to the debtors' business?

A. No, we have not.

MR. LAURIA: That's it, thanks.

THE COURT: Okay. Thank you.

MR. SERINO: May I have a minute, Your Honor?

THE COURT: Sure.

(Pause)

MR. SERINO: Just a few questions, if I may, Your Honor?

THE COURT: Surely.

REDIRECT EXAMINATION

BY MR. SERINO:

Q. Good afternoon, Mr. Panagos, Joe Serino for the debtors. You were just asked a question about whether the Sirius DIP proposal was superior purely on economic terms to the first lien lenders' DIP proposal. Take out the economic terms, or don't confine your answer just to economic terms, do you have an opinion as to whether the Sirius DIP proposal is superior to the first lien lenders' DIP proposal?

A. The Sirius proposal requires a priming of the existing first lien holders. And that priming would most likely -- well, we've been informed by the first lien holders that they would fight that priming. And so, therefore, the certainties of receiving the cash today in the first lien holder proposal

that is currently on the table and before the Court would be superior. Because there's no risk associated with it with respect to getting that approved.

Q. Does the Sirius proposal also have a due diligence out, if you will?

A. Yes, it does. It is subject to five or six due diligence items.

Q. And what effect, if any, does that have on your conclusion that the first term lien lenders DIP proposal is superior to the Sirius proposal?

A. Well, there is no such clause in the existing first lien holder DIP proposal. So therefore, it is not contingent upon that due diligence.

Q. How long have you been a financial advisor?

A. I've been a financial advisor for more than twenty years.

Q. And how many times have you advised companies in bankruptcy?

A. Numerous times. I've been involved in more than seventy different situations over the course of the twenty years and have acted in various capacities regarding, you know, a whole host of companies from being advisor to a company, advisor to secured creditors, advisor to unsecured creditors, as well as taking interim management positions in companies both inside of Chapter 11 and outside of Chapter 11.

Q. And in those situations, have you been involved with

looking for and evaluating DIP financing proposals?

A. Yes, I have.

Q. Were you involved in that process in this case?

A. Yes, I was.

Q. How would you characterize the process, just very generally?

A. Very consistent and, you know, very thorough.

Q. Is there anything you saw that led you to believe that the process was anything under than arm's length?

A. Absolutely not.

Q. And as you sit here today, do you have a view as to whether the DIP proposal that is part of the debtors' motion today is the best financing currently available to the debtors?

A. I believe it was the best financing currently available to the debtors.

MR. SERINO: Thank you. No further questions, Your Honor.

THE COURT: Anything more, Mr. Lauria?

RECROSS EXAMINATION

BY MR. LAURIA:

Q. Did I understand your testimony to be that the proposal, the first lien lender proposal was superior for two reasons? That the Sirius proposal requires priming and has the diligence out?

A. Yes.

Q. Now, you've looked at the diligence requirement?
A. I took a quick look at it, yes.
Q. Are you aware of what the requests are?
A. Generally. I mean I don't know if could recite all six or seven items, but I have seen them.
Q. Were there any of them that jumped out at you as looking like something that the company would have any problem providing?
A. No.
Q. And you're aware that Sirius has said that they could complete their diligence in forty-eight to seventy-two hours?
A. Yes, I am aware of that.
Q. All right. Now, the proposal that's before the Court includes priming also, is that correct?
A. Yes, it does.
Q. And, in fact, it includes priming on exactly the same terms as the Sirius proposal, correct?
A. Yes, it does.
Q. All right. Now, if I were to be able to represent to you that the diligence requirement had been satisfied, is it fair to say that you have two loans that both require priming; one is cheaper than the other and one provides for resolution of disputes that exist at the license subsidiaries as opposed to resolution of disputes at the parent?
A. Well, coupled with the fact that the Sirius proposal would

require the consent of the existing first lien holders for that priming.

Q. Why would it require consent?

A. Well, it would either require consent or it would require the Judge to authorize the priming.

Q. Doesn't the existing proposal provide adequate protection?

A. Well, the first lien holders have consented to priming themselves.

Q. Is there any reason why that adequate protection would be inadequate if a different lender was making the loans?

A. I haven't given it much thought right now.

MR. LAURIA: Thank you.

MR. SERINO: No further questions, Your Honor.

THE COURT: You're excused. Thank you.

THE WITNESS: Thank you.

THE COURT: Does that close the evidentiary record or is there more?

MR. SERINO: There's nothing more from the debtor, Your Honor.

MR. LAURIA: Your Honor, I would just like to make sure that the record includes the proposal for DIP financing that my client's provided.

THE COURT: That proposal is attached to your response?

MR. LAURIA: Supplement to our limited objection.

THE COURT: I have that and I'll take judicial notice of it.

MR. LAURIA: Thank you.

THE COURT: Because it's in the record of a case.

Now, it's up to somebody to either have closing argument or to say something more. Or we'll take a resource. We are going to take a recess at some point. I need to cancel an engagement that I had and I wasn't expecting that we'd be here quite this long. So at some point in the next ten minutes, I'm going to need to take a short recess.

MR. HENES: Your Honor, I'll be very brief, much shorter than ten minutes.

Your Honor, as all of our pleadings that we filed in the case, so far with respect to the DIP and the testimony that was set forth in our declarations and then in the cross examination, what we've demonstrated, Your Honor, is that the debtors ran a very good process. And that process, as I mentioned earlier, was helped by the Court.

We stood before you on the first day; we only had one DIP proposal. All of us did go out and try to get others, but we couldn’t get anybody to talk to us. One of the reasons for that is all of the parties that were not involved in this case would not talk because they didn't want to try to provide a priming DIP.

After that we sat down, we negotiated a deal between our first lien holders, and as I mentioned, we have eighty-eight percent of our first lien holders that are either supporting the deal or have no objection to the deal. And the other twelve percent we've never heard from.

The DIP, as you heard from Mr. Burgess, is critical to this company. This company is in the business of putting content on the air. And the better the content the better the advertising revenue they get from that contact.

Mr. Burgess has also testified to, and it's in his declaration, that after we got the interim financing, he was able to sit down and restart discussions with content providers. And this is for the regular business of this company, to buy content and put it on the air. But those content providers are not willing to do a deal with us until they know that they're commitment is out there for us. And that's why we need the full commitment for the 150. And I think we've demonstrated that in all of our filings and in our testimony.

We've also demonstrated that this went through the board. The board of directors and Mr. Burgess, who's on the board of all of the companies as he's testified to, heard from the advisors, heard from the management team about the process, about the DIP, we provided them with a significant amount of information. And they asked, and we put this in our papers, they asked a lot of questions to figure out what was the best proposal to move forward with.

And after that, once we got the proposal from Mr. Lauria's client, we went back to the board to discuss that proposal, and raise those issues. And at the end of the day the board made an informed business decision to move forward with the DIP that's being provided by Mr. Dizengoff's group and it's supported by Mr. Bane's group and the other holders of the first lien debt.

The issue with respect to the licenses, I really think in some ways is -- I was just going to say a red herring, but it's confusing. Because on the one hand we have Mr. Lauria saying, well, we have a commitment for 150 million dollar DIP on the exact same terms, except for some economics. But then on the other hand, you hear him start talking about liquidating the company, or the potential of what happens in a liquidation.

I think what we're talking about here is we really do have -- we had three proposals, all for 150 million dollars, which would all allow us to go operate the business in the management team's business judgment and the board's business judgment to buy content and put it on the air. We ended up agreeing to one, resolving another one that's basically combined with it. And not moving forward with one that does have does have a diligence out. Okay. I understand what Mr. Lauria is saying, I could do it in three business days, but at the same time what happens if after they sit down with management his client decides I don't want to move forward with this anymore. Now, we're days out without a DIP. The business is hurt because we've heard from Mr. Burgess that we need the money now.

So based on all of that, and just based on -- based on the full record, and based on the case law, we've used our business judgment here to decide to move forward with the DIP, fully committed, ready to be signed up, no outs whatsoever, it provides us with the financing that we need to be able to go buy the content that we need to continue to grow this business to maximize the value of the estates.

And based on that, Your Honor, we seek approval of the DIP motion as has been set forth to you.

THE COURT: Okay.

MR. HENES: Thank you, Your Honor.

THE COURT: Before hearing from others, I'm going to take a break for about ten minutes, until 5 o'clock. But there are others that I would like to hear from.

I would like to hear from counsel for the creditors' committee in terms of the committee's judgment with respect to the DIP financing, because the committee has not only filed an extensive objection to the financing, which has since been resolved, but I'm assuming in the exercise of the traditional watchdog role for unsecured creditors in the case, has also considered the Sirius DIP alternative, and may have a view on that. I haven't heard that yet.

To the extent that counsel for the proposed DIP lender wishes to say anything with regard to the process and the collateral package particularly as it relates to the licenses that we've spoken about at length today, I'd like counsel to have, at least, an opportunity to speak to me on that subject. That's an invitation which doesn't have to be accepted, it's simply open and available.

And, obviously, I'll hear from Mr. Lauria.

MR. HENES: Thank you, Your Honor.

THE COURT: We'll take a break to 5.

MR. HENES: Thank you.

(Recess from 4:50 p.m. until 5:11 p.m.)

THE COURT: Be seated. How about committee counsel.

MS. LEVINE: Thank you, Your Honor. Sharon Levine and Wojciech Jung from Lowenstein Sandler.

Your Honor, I'm a little bit at a disadvantage, although I tried during the break to poll the committee, but I wasn't able to reach them. What I can say to the Court is we had, obviously, a number of objections with regard to the DIP. The proposed DIP lenders and the debtors met what we considered to be our biggest concerns, with regard to the avoidance power actions, the lien review period and the other items that have been enumerated for the Court.

Just now in the hall Sirius has met or beaten all of those concessions, but we still have a concern with regard to whether the added gives and the two percent interest rate would be worth a priming fight. And, frankly, without being able to poll the committee with regard to the uncertainty that would create, I'm reluctant to indicate to the Court that that would be a preferable route.

THE COURT: I take that as a guarded statement of neutrality.

MR. DIZENGOFF: Good afternoon, again, Your Honor. Ira Dizengoff on behalf of the proposed DIP lenders and the first lien lender group.

Your Honor, just to quickly address your two points. You asked about process and what we thought about the process. The debtor, acting as the appropriate fiduciary that they are, took the time that was given to them and went and solicited additional proposals and used the other proposals that they got to come back to our clients and effectively beat them up, for better terms. So what you've got today is a dramatically improved DIP for the estate. You know, we're not thrilled with that, but it's a DIP financing we're prepared to live with. So I think that on a process point there were a lot of arms length negotiations, it was arduous at times, and we are where we are.

Your Honor, in terms of the collateral package question that you asked, I think as you correctly noted, any DIP lender worth their salt would ask for a first lien on every asset the debtor has encumbered on encumbered, etcetera. And that's precisely what we did. I think the record here is pretty clear. Mr. Panagos address this exact point in paragraph 27 of his declaration, in which he tells you that the DIP lenders insisted upon liens on the license subsidiaries, et cetera. So that's the package that we insisted upon. And if we were to make that loan that is what we would insist upon.

THE COURT: Let me ask you one additional question.

MR. DIZENGOFF: Yes.

THE COURT: And that is the intercreditor agreement and whether or not from your perspective a DIP proposed by Sirius or any other second lien lender for that matter, that was materially more favorable for the company and viewed by the company as worth a priming fight, would there also be an argument that would be made by the first lien lenders that it was contractually impermissible and not to be approved on account of breach of the pre-petition intercreditor arrangements between the parties.

MR. DIZENGOFF: I think, actually, Your Honor, that would probably occur, that argument would probably be made. I think that's probably a state law remedy. So if you were to approve a DIP that was proposed by second lien lenders that was better for the estate, we have contractual rights under that intercreditor arrangement. If we could prove damages it would play out, I think, in some other court. But I don't think it's an issue that you'd have to grapple with.

THE COURT: But would it be an issue that would be raised as part of the priming fight, or would it be treated as simply an issue to be put to one side for whatever recourse might be available at State Court?

MR. DIZENGOFF: Your Honor, I think that's your remedy, your option. And the reason I say that is because I think the intercreditor arrangement is very clear. I think 11(c) says that as long as the first lien lenders are supporting a DIP financing, they can't propose their own DIP or they can't object to the DIP that's in front of them. So I think as a threshold matter you could determine and say that the gates are shut for a second lien DIP proposal.

Alternatively, I think you can argue another way and say the intercreditor issues aside, I can address that issue in State Court and just pump that to State Court and not have to have that as a Bankruptcy Court determination, whether it's appropriate to go forward with that or not.

THE COURT: Okay. I'm not asking you to preview an augment that's not presently in front of me. I was just interested to know what your position was.

MR. DIZENGOFF: Thank you, Your Honor.

THE COURT: Thank you. The U.S. Trustee wishes to be heard from as well. This is good.

MS. GOLDEN: Good afternoon, Your Honor. Susan Golden for the U.S. Trustee.

I'll be very brief. We would really just like clarification on something. We would like to be included in your process and in the loop. We realized that you were negotiating, all of you, down to the wire. And when we came to Court we had to ask for a copy of the revised DIP agreement and, also, for the written order as it stands. And we would just like debtors' counsel to confirm in Court that we will be copied on the form of proposed order before it's presented to the Court.

MR. HENES: Your Honor, we actually will do that. We apologize to the U.S. Trustee's Office for not being able to get them anything before we walked into Court, but we will do that, absolutely.

THE COURT: Fine. Mr. Lauria, I think it's your turns.

MR. LAURIA: Your Honor, just to start out I want to be clear on the record -- and further to the U.S. Trustee's comments, to the improvements that we have agreed to make in our DIP proposal.

Number one, our proposal is submitted in writing contemplates that Sirius would backstop the full amount of the DIP but would retain thirty million dollars of the DIP for itself and permit the first lien lenders to fill the remaining 120.

We have withdrawn the thirty million dollar holdback requirement. In other words, we're prepared to go forward with our DIP simply as a backstop and offer 100 percent of the financing to the first lien lenders. That is, to the lenders that are currently providing it. And all we would be doing is backstopping to make sure that if they don't provide the full commitment at 150 million we'll provide whatever they don't provide. Which could be the entire amount if they all decided they don't want to do anything on the terms that we have proposed.

In addition, we have agreed that we would -- well, of course, as you're already aware, reduce the interest rate by two percent. And we have agreed that there would be marshaling such that all recoveries under the DIP would come first from the non-license subsidiaries, and only if there's a deficiency would the DIP be able to step down into the license subsidiaries.

In addition, as a consequence of conversations that we have had the counsel for the unsecured creditors' committee, we've agreed that there would be a 500,000 dollar allowance for the investigation and prosecution of avoidance actions. We have agreed that the committee would have 120 days as opposed to ninety days for doing that. By the way, I think the DIP proposal is 150,000, we're at 500,000. We have made clear that we will take no lien whatsoever on avoidance actions. And we've also made clear that there would be no releases of claims against the first lien lenders, whatsoever, related to control issues in the language we understand the committee is intent on investigating.

And the final point is that we have agreed that in a plan of reorganization our DIP would convert into not more than fifty-six and a quarter percent of the equity. And it may be less when we get to the point of negotiating and developing a plan. But we've put the cap at fifty-six and a quarter percent, which I believe is approximately fifteen percent less than the current proposal from the first lien lenders.

That said, Your Honor, I wanted to turn to a couple of other issues here. First of all, the Court asked the question to the proposed first lien lender counsel what he would, in fact, be of the intercreditor on the ability to go forward with this DIP. And I think counsel said that in his view that it's principally a state law claim. It wouldn't stop the DIP from going forward, but maybe they would try to make the argument.

I just want to be clear, Your Honor, and, again, I understand that this is something that isn't before the Court today, but Section 11 of the intercreditor -- 11(c) in particular, seems to, on its face prohibit the second lien lenders from doing eight things. None of those eight things are proposing a DIP of their own. There is simply no prohibition, there's no words that you can construe to be a prohibition against proposing a DIP by the second lien lenders. So to the extent that's important to the Court we can offer the intercreditor agreement into the record and the Court can take a look at that. But on its face there is no prohibition.

Your Honor, turning to the record briefly. I think that the testimony that was offered to the Court establishes a number of things that are interesting and, perhaps, troubling in the context of approving the DIP. Notably, the CEO of the debtor testified that there has not been any meeting of the boards of directors of the subsidiaries with respect to the original DIP proposal or any amendment or modification to the DIP. And I think that's significant. Even though there are plenty of other cases where we have multiple debtors, we do a significant amount of debtor work ourselves, we actually go to a great deal of pain and suffering to ensure that there is an appropriate corporate process that is conducted through the organization. And in anticipation of that in Chapter 11 we try to do things like cleaning up the board so that you have as few separate meetings as possible. But, nevertheless, we do have board meetings and boards have to take up the issues and make decisions. And if a board hasn't taken up the issue and hasn't made the decision I don't believe there is any business judgment that's been exercised that the Court can properly defer to. And, here, the only board that has met we were told by the CEO on the stand, is the board of the parent corporation. So based on the fact that we have issues regarding the value provided by the DIP as opposed to the cost of the DIP at the subsidiaries and no board assessment of those matters at those levels, I just don't know how the DIP proposal as cast can go forward. Because I don't see what would be the evidentiary basis for the Court to make a finding that the debtors have properly exercised their business judgment.

Moreover, I think it's clear that at least in the case of the CEO that he has conflicts of interest with respect to the approval of the DIP. He is desirous of building this business into more of a content based business, or entertainment content based business than it currently is. And he is pursuing the DIP for the purpose of doing so. I think that was made absolutely clear during the testimony.

Currently, the company apparently broadcasts about seventeen hours a day as an infomercial. And I assume the other seven hours are entertainment. The CEO's testimony is that he wants to go out and buy more entertainment based content so that he could sell advertising. He thinks that’s the way to improve this business.

Now, as an aside, I would say it's very unusual in my experience for a debtor to be at this early stage of the case pursuing a new business plan, not an old one. But a new business plan in obtaining financing to pursue that business plan before it's been vetted with the stakeholders or the

Court, which is exactly where we are today.

Now, the defense on that point that was made by the CEO was well, obviously, everybody thinks this is great because I've got three guys willing to provide me this DIP financing. The reality is that the DIP financing is first lien priming DIP financing that net -- the company expects to have an exposure on of seventy million dollars at the end of the year. And I don't think anybody believes that that seventy million dollars will not be repaid, regardless of the success or failure of this business plan.

But it's not just the security of the DIP lender that we have to think about. In fact, I would propose to you that that's the last thing we should be thinking about in approving a DIP. The question is is the DIP moving forward the process and maximizing value in getting the return to the stakeholders as appropriate under the provisions of the Bankruptcy Code. And the testimony of the witness -- both witnesses, as a matter of fact, is that there's been no liquidation analysis performed with respect to these business, there's been no going concern analysis performed with respect to these businesses. And, in fact, no view was expressed with respect to those critical things. So it's hard to understand how a business decision could even be made if there wasn't analysis of what do we get by incurring this additional debt in terms of value that we could distribute to our stakeholders versus what we would have if we didn't incur that debt. And I don't think it's fair simply to say that we assume that he continued operation of the business is worth 150 million dollars more than some other recovery would be if the DIP didn't go in as proposed.

In that regard, Your Honor, a critical point of testimony is the CEO acknowledged that the BIA appraisal was 1.8 billion dollars. That was December of 2008. That is a breakup valuation. That is a breakup valuation. That is a disposition of the businesses based valuation that focuses on the markets where the licenses are located. And so that I believe is some evidence --

THE COURT: It's not evidence at all. It's not in the record. It's complete hearsay. You can't credibly argue on the basis of it. So I disregard what you just said. And, certainly, you shouldn't call it evidence. And you know better than to call it evidence.

MR. LAURIA: Well, Your Honor, the CEO testified that he received the appraisal and that's what the number was.

THE COURT: It's not in the record. It's complete poppycock; it's somebody's number from last year. You want to argue it than you should have had somebody here to testify to the breakup value of the company.

MR. LAURIA: Well, in fact, Your Honor, I learned about it while the witness was testifying.

THE COURT: Fine, I heard it, too. I know what it's worth, zero. All right.

MR. LAURIA: Well, I hope that the testimony that there's been no liquidation analysis and no going concern analysis and no assessment of the breakup value of this company and no advice provided by the advisors to the board of directors even of the parent, is worth more than zero.

THE COURT: What's also worth more than zero is the declaration of the witness, and you didn't ask him any questions about the declaration. Which include, among other things, is the fact that the business rollout was in September of '08. It wasn't during the bankruptcy process, it predated the bankruptcy process.

Additionally, there are charts and graphs and a variety of financial data which you chose not to cross-examine, it's all in the record.

MR. LAURIA: I did choose not to cross-examine, Your Honor, because I couldn't get the witness to even answer basic questions without a fight.

THE COURT: You didn't ask a single question based on the declaration, you went down the path you chose to go down.

MR. LAURIA: I did. I did.

THE COURT: And so everything in the declaration is uncontroverted.

MR. LAURIA: Okay, Your Honor. If you want me to give up, I'll give up.

THE COURT: No. I want you to continue the process that you think is reasonable for your client.

MR. LAURIA: Well, that's what I've been trying to do, Your Honor.

THE COURT: Okay. We all have different ways of approaching the same problem.

MR. LAURIA: Your Honor, this started -- my client's involvement in this case started based on its assessment that there is not an enforceable lien for the first lien lenders or the second lien lenders on the FCC licenses. And that view is based on FCC rulings and FCC pronouncements. And in the record or at least attached to our limited objection which the Court I suppose can take notice, is the FCC Section 314 application to transfer to sign a license. Which includes multiple statements by the FCC -- just as an example, on page 10 of worksheet 3, "similarly the commission precedent currently prohibits (1) pledge of a broadcast license as collateral for a loan or (2) grant of a security interest or similar encumbrance in a broadcast license." Those seem to be pretty unequivocal statements which, in fact, directly mirror the administrative determinations that the FCC has made in the cases that we have cited to the Court in our papers.

We think as a consequence, that there being no lien in the licenses that as the estates currently exist there is significant value to be recovered by the unsecured creditors of those license subsidiaries. And that a DIP that shifts that value to the new lender or to the benefit of the parent or other debtor estates should not be approved. And there has been no evidence put in the record that the boards of directors of any of those entities conducted any analysis or consideration of those issues in connection with the presentation of this DIP. In fact, the actual evidence is that those boards never met, period.

So under the circumstances, Your Honor, we think that we put on the table a superior proposal. We can't make the debtors take it, but we think that it's something that the debtors ought to be required to consider. And we would certainly hope that with maybe some direction or guidance from the Court that as consensual arrangement could be achieved here, that would protect the interest we're trying to protect and permit the financing to go forward and the debtor to proceed with the implementation of its business plan without requiring us, today, to waive those protections. The ability to have -- to argue for it at a point in time in the future that we have an unfettered shot at realizing the value at the license subsidiaries, either in the context of a plan, or in the context of a different type of transaction, however these cases turn out. We think it's inappropriate that we lose that shot with approval of the DIP based on this record.

Moreover, I believe the testimony of the CEO, again, on the record, that although he intends to borrow seventy-five million dollars immediately upon approval of the DIP -- in fact, doesn't have any plans to spend more than the forty-four million dollars he currently has in the bank today at least over the next week. So if the Court were to give the parties some time to try to work towards a resolution, I don't think we have testimony that says that anything is going to happen in the next few days. It's the Fourth of July weekend and the company is currently sitting on forty-four million dollars in cash.

So we would continue to argue, if nothing else, for an adjournment so that the parties can continue to discuss, we can continue to do everything we can to satisfy our diligence requirement, which we believe will be satisfied very quickly. It's not something we have a great deal of doubt about, it's just a matter of dotting the I's and crossing the T's. And either we come back with an agreement or we don't. And at that point the Court can make a decision. But in the meantime, the debtor has forty-four million dollars available to it to go down the path of purchasing programming to the extent it's available to be purchased as proposed.

I do note, Your Honor, that the CEO did testify that the programming he's seeking to purchase at this time is not for the present period, but beginning in the fourth quarter of this year and going through to the end of the third quarter in

2010. And I do think it's worthwhile for the Court to pause for a moment and consider the propriety of having the estate incur long-term very large administrative expense obligations out into the future, when we're standing here today at the very early stages of the case and have no understanding between the debtor and the stakeholders or the Court or anybody else, as to what a plan of reorganization is going to look like, and how the best way is to achieve maximum value for the stakeholders.

I'm happy to answer any question that the Court has or address any concerns that the Court has about anything we've said in our papers, or any of the authorities that we believe are relevant.

THE COURT: I don't have any questions.

MR. LAURIA: Thank you.

THE COURT: Does anyone else wish to say anything else at this point?

Well, this turned out to be a much longer hearing and it had a different character from what I expected.

In effect, Mr. Lauria's last remark is I'd like an adjournment. Before I comment on my views of what I've heard today, I'd like to know the debtors' reaction to that request.

MR. HENES: Thank you, Your Honor. John Henes, again.

I have two reactions to that request. The first reaction is, and I think there was testimony to this, and I didn't write it down, so I can't quote it. Mr. Burgess, I believe testified today that he has been in discussions with content providers and that he believes that he will be able to get to a deal. And I think he said within days, with some of these content providers, once he gets this DIP commitment.

And I think there's a misunderstanding about the business. While, yes, you're trying to plan for the fourth quarter, you need to buy the content now to get it on in the fourth quarter. It's not that you can buy it and turn a switch on and put it on. So the first point is the debtors need this commitment today. This is not about next week, it's not about taking a flier on what happens when we, you know, try to go look at some other proposal or take an adjournment.

The second issue that I have is sitting here I'm a little bit confused. Because on the one hand Mr. Lauria is saying I have a proposal here for you, 150 million dollar DIP, take it. It's on the same terms of these guys, it's just better. Right. And that has the ability for us to go buy content. And then on the other hand he says Judge, slow down, don't do this yet because how can these guys start buying content without fully vetting their business plan with everybody. That's a little bit odd to me, and it makes me very nervous standing here and sitting here listening about what would happen if you did get an adjournment. Because I think at the end of the day it's very clear what Mr. Lauria and his clients want. They believe that the pre-petition lenders don't have a valid lien on the FCC licenses and, therefore, under Section 552 of the Bankruptcy Code on the proceeds from those licenses. So to the extent there's a sale or whatever, it may be a plan, I don't know what the argument is, but that would be that Mr. Lauria's clients as unsecured guarantors could have a claim for that. That's an argument for another day. This is an argument about getting our 150 million dollars of DIP financing approved today providing a DIP, providing a lien on all of the assets of the company. And I think you said something earlier today, Your Honor, and Mr. Lauria made a comment, which it stuck in my mind, that isn't it always the case that DIP lenders will go and get a lien on all the assets, even unencumbered assets.

THE COURT: That's what I said.

MR. HENES: And Mr. Lauria's reaction to that well, these licenses have intrinsic value in and of themselves on their own. Well, so does real estate. There's unencumbered real estate that somebody gets a lien on, well, that real estate could be sold. This happens all the time, this is not something new and different. For the 150 million dollars that they want to provide to us, they want to get a lien on everything. With respect to the pre-petition lenders, if they don't have a lien moving forward there could be an argument there. I actually think under the intercreditor agreement Mr. Lauria's clients have a problem because even if there's no lien on those proceeds, I believe that there's still an issue -- a subordination of claim issue in there, which we could get to at a plan confirmation time. But for today as we sit here, the company needs this commitment. We've been working incredibly hard to get here. We have looked at all of the issues and we made a sound business judgment decision to enter into this DIP. And we've negotiated a deal with everybody else.

Last point, Mr. Burgess is, as he said, the director of each of those subsidiaries. Mr. Burgess with respect to the initial DIP -- the interim DIP that we got approved, he's been at every single board meeting. We have resolutions that have been signed by Mr. Burgess for that initial DIP. The would be signed for this DIP as well. Because we're not going to have 160 or whatever it is, 7 meetings to go and decide this. We have a meeting, Mr. Burgess is there, he made a business judgment decision based on all of the advice that his counsel gave, that the financial advisors gave. And so based on all of that, Your Honor, and I'm sorry, because I know you just asked me one question and I just rattled on, that we believe the DIP should be approved today. And the debtor really does need it, I think Mr. Burgess testified to that.

THE COURT: Okay.

MR. HENES: Thank you, Your Honor.

THE COURT: If this were an auction of assets and

Sirius a disgruntled bidder, we wouldn’t have spent this much time. But Sirius is a party-in-interest, and we have the unusual circumstance of what amounts to a business transaction that's so attractive, apparently, that both the first lien lenders and a large second lien lender are quite anxious to participate in the deal to the point of improving it.

As noted during Mr. Lauria's closing remarks, the deal seems to be improving even during the hearing. In addition to being two percent more favorable in terms of the applicable interest rate, the thirty million dollar piece reserved for Sirius is now available for any first lien lender to take, in effect, as a free rights offering, only backstopped by Sirius. The unsecured creditors get the added sweetener of 500,000 dollars instead of 150,000 dollars for purposes of investigation.

The deal is demonstrably better. So why then would a debtor-in-possession with fiduciary duties to all stakeholders take the position that has been taken today? I think the answer is pretty straightforward. There's an out. There's an unacceptable diligence out. There's an unacceptable risk factor which Sirius could have chosen today at this hearing to waive, but didn't. Instead, the argument made is that the diligence items are straightforward and easy enough to satisfy promptly. That's too late, and too little.

These are not even deals that could be accepted today.

For that reason, it is perfectly rational for the debtor-in-possession through its senior management and board, after being advised by counsel and its proposed financial advisor, to conclude that enough time has elapsed in order to obtain a final DIP agreement that would allow this company to get about the business of acquiring content so as to fulfill its business plan.

Mr. Lauria's arguments with respect to the business plan aspect of this case ring hollow because his client is prepared to finance that very same business plan.

Additionally, as I noted during my colloquy with him at the end of today's hearing, he asked not a single question addressed to Mr. Burgess' declaration, which I read this morning with care. There were lots of very colorful charts, I tried to understand them. Regrettably, nobody asked a single question to try to explain those charts. But my best understanding is that it is the debtors' belief that by acquiring content like NCIS and other programs that had been on primetime networks in the past, that advertising revenue can increase, and overall enterprise value can increase correspondingly. No one has challenged that proposition. That is the introverted aspect of this case that to me demonstrates that 150 million dollars of debtor-in-possession financing, is, in fact, not only needed and appropriate, but even Sirius recognizes the plan as rationale or they wouldn't finance it.

They wouldn’t be so anxious to finance it.

At bottom, this is much less about liens on FCC licenses.

Mr. Lauria, do you know how rude it is to get up when I'm in the middle of giving an opinion which relates to your argument? Did you think I wouldn't notice that, do you think I deserve an apology.

MR. LAURIA: I will apologize. I have clients here, I just want to make sure that they understand what's happening and what the basis of the Court's decision is --

THE COURT: Well, you know something, I haven't fully rendered my decision. And I think it would courteous of you, indeed, it would be the kind of civility that a first-year lawyer would expect to hear from a senior partner. Don’t do something like that in Court you'd say to your first-year associate, that’s just plain rude. Don't you think you'd say that?

MR. LAURIA: Your Honor, I don't know. My client's aren't sitting up here and their rights are on the table and I want to make sure that I understand. And I mean no offense to the Court.

THE COURT: You may think that that's your rationale for having gotten up in the middle of my speaking to the courtroom, but I think it reflects an extraordinarily lack of civility, and something that, at least, in this courtroom warrants an apology.

MR. LAURIA: Your Honor, I am sorry.

THE COURT: Not an explanation, an apology.

MR. LAURIA: I am sorry, unequivocally. And I didn't intend it to draw the Court's ire, I really didn't understand --

THE COURT: It's not ire, I am noticing how rude you are. I am noticing how rude you are and I believe it's good to call that to the entire courtroom's attention because it will provide an example that others will learn not to follow. In the future when you are at counsel table in the same way that you would ask permission to approach, you should ask permission to leave. Do you understand that as a very basic way that lawyers in federal court choose to behave because it's part of what I would call courtly good manners. You just demonstrated a lack of appreciation for something that's awfully basic. Don't you agree?

MR. LAURIA: I apologize, Your Honor, and intended no offense.

THE COURT: Obviously, it was a --

MR. LAURIA: I sincerely intended --

THE COURT: -- thoughtless and rude thing to have done.

MR. LAURIA: It was thoughtless.

THE COURT: And it suggested to me that you didn't care about what I was saying and you weren't listening with care.

MR. LAURIA: I was listening very carefully. In fact, it was one of the things that the Court said that caused me to go back to my client. That was -- I was very carefully listening to what the Court said. And it was one of your statements, Your Honor, that caused me to go back to my client.

And I apologize -- again, I just want to be clear. I intended no offense. It was a thoughtless act on my part, and to the extent that it has in any way offended the Court and the Court feels that it is inappropriate conduct on my part, I'm sorry.

THE COURT: It's not sanctionable behavior, it's just plain thoughtless and rude.

MR. LAURIA: I'm sorry.

THE COURT: And I expect it will never happen again in this courtroom or any other. And I'm surprised because, Mr. Lauria, I've seen your picture in the newspaper, I know you're involved in a lot of high profile cases, this is one of them, but a reputation is not just built on taking extreme positions, it's built on courtesy, and thoughtfulness and professionalism.

MR. LAURIA: I understand, Your Honor. And, again, I apologize. I really sincerely apologize.

THE COURT: Thank you. One of the reasons that Mr. Lauria has lost despite his attempt to make much ado about the value of the licenses is that the licenses are not what this is about at all. It is a complete and utter red herring for purposes of today's hearing. As I said earlier, any debtor-in-possession lender coming into the present situation would demand as a condition of lending a lien on all unliened assets. And would also demand a priming lien, that's exactly what we have here.

All of the arguments relating to what these licenses might be worth in a liquidation are beside the point for the very same reasons that Mr. Henes noted when he pointed out that if we were talking about unliened real estate as to which unsecured claims might have a recovery which ended up as collateral in a real estate debtors' portfolio, the same result would follow.

As I said at the outset, this is not the confirmation hearing, this is not a hearing with respect to substantive consolidation, this is not a hearing with respect to intercreditor claims. This is a hearing that relates to whether or not this debtor needs a debtor-in-possession financing facility with these terms. And whether or not these are the best available terms. They are and that cannot be disputed. And it cannot be disputed because Sirius has come in here, I presume in good faith, to offer a better transaction. But it wasn't ready today. It could have been but they didn't do there diligence, or they chose not to.

Now, the most telling objections to the debtor-in-possession facility were those that were lodged by the creditors' committee. As I said earlier, forty-seven pages of lengthy argument as to why various terms and conditions of the DIP facility needed to be improved, they were improved to the point that the committee withdrew its objection. Notwithstanding the fact that that objection was withdrawn even during the break that took place about an hour ago, apparently Mr. Lauria and his client attempted to entice the creditors' committee to move in their direction. Regardless of that attempt, the record demonstrates that the committee's reasonable needs have been satisfied with respect to the DIP facility which is on the table.

Finally, with respect to the question of need, from the very first day of this bankruptcy case when we had a rather difficult contested hearing related to a DIP facility that was far inferior to the one that's presently before us, the debtor urged prompt, indeed, on that day immediate approval of a DIP facility that included any number of features that I stated from the bench were objectionable. I am pleased to note that many of those objectionable features have been removed.

I also note, that in both the current proposal and the proposal offered by Sirius the conversion to equity at exit represents a significant feature of the DIP proposal. While that does not mandate what happens in a plan, it demonstrates a mindset of those investors who are already closely associated with this business. What it strongly implies, although it doesn't prove, is that those who are prepared to put new money into the business plan believe that the enterprise value may well increase by virtue of the programming decisions being made by management, and that this is a business that in all likelihood we hope may lead to a reorganization.

For that reason, liquidation value is not before me today. No value is before me today. As I said earlier in my remarks about the 1.8 billion dollar number that was mentioned in a question of Mr. Burgess, the fact that somebody used that number does not prove anything to the Court. I am satisfied, however, that the debtor has demonstrated a present need for a significant DIP facility in order to fulfill its business plan. I find that that is reasonable and true notwithstanding the fact that next week it may not be necessary to spend all or any of it. I recognize that in the entertainment industry, in particular, the perception of strength is almost as important as the reality of strength. That stronger players have the ability to attract the kind of attention from content providers that may lead to being able to cut appropriate deals for content.

A motion which is presently before me, but not yet heard, involves the means by which the debtor may be able to acquire content in the future. I consider that motion to be directly related to the DIP motion and to in all respects rebut the argument made by Mr. Lauria, that this is a week-by-week analysis.

For the reasons stated, I approve the DIP that is before me, and will entertain an appropriate order. And I think we should move on to the rest of the agenda.

MR. HENES: Thank you, Your Honor. Kirkland & Ellis on behalf of Ion, again.

And with respect to the order I know people are going to want to review it, since everything happened so quickly at the end. So we will do that and get an order to you quickly.

Mr. Dizengoff said if we don't get the order to you today, it would have been an event of default. It won't be, they'll push that to the 8th.

THE COURT: That's very generous of you.

MR. HENES: But we will make sure everybody gets it, including Ms. Golden, to review, and we will get that to you as quickly as we can.

MR. LAURIA: Your Honor, may I ask that we get to see a draft of the order before it's submitted to chambers?

THE COURT: You can certainly ask.

MR. HENES: I have no issue with that.

THE COURT: That's fine.

MR. HENES: Your Honor, one last thing on the DIP, there's some clarifications that Mr. Bane wanted me to inform the Court of based on some of the pleadings that were filed last night and this morning, just so there's no confusion. Just give me one second to look at this, Your Honor.

(Pause)

MR. HENES: Okay. So there are certain points of the settlement that are mentioned in our second supplemental motion and they should be included in the final order. And they are not in the amended DIP agreement. And we're going to include all of those. And I'll just tell you what they are very quickly.

The fees of Ropes & Gray, and they've retained a valuation consultant for, I think, 60,000 dollars, those fees will be paid through the date of the entry of the order. And that was in our supplement, all of this was in our supplement.

The disclosure date, that is -- we had confidentiality agreements with Mr. Bane's clients, there was a disclosure date. They want to move that date up so we can make sure that we put that information on Interlinks, that allows people to trade, and we have no problem with that, and we're going to do it as soon as we can do that. But by no later than fifteen days prior to the subscription deadline for the DIP.

There's going to be a representation that's Schedule 2.01 of the amended DIP agreement will be amended to reflect that non-closed trades will be reflected on the record date. And that's described in the second supplemental motion. Also, a representation that I'm making is that schedule 2.05 of the amended DIP agreement will be amended to reflect the assurance of minority shareholder rights, to the extent there is a conversion of equity, conversion of the debt to equity. At thee end of the day, Mr. Bane's group wants to make sure that there will be protection for minority shareholders. And that was agreed to so long as it's -- you know, it has to be reasonably acceptable to the DIP lenders. But that's a plan issue that we will get to, hopefully.

And, then, last representation is that Schedule 2.05 of the amended DIP agreement will be amended to reflect that the equity conversion will be adjusted if the final fifty million dollars is not funded within one year of the plan consummation. That issue is, that as you know, with the 150 million dollar DIP fifty million would come at the end of the day if we get a plan done. And that has to be funded within one year, and it's agreed to that it will be, it's committed to be there. Mr. Bane's group just said that in the even that it's not for some reason, which would be a violation of the agreement, that the conversion, which would be under sixty-two and a half percent of the equity, would be scaled back. And that, again, would come at plan confirmation time.

THE COURT: All right.

MR. HENES: Thank you, Your Honor.

Now, moving ahead, Your Honor -- and I will admit I'm a little disorganized from that last hearing, but I will -- I think I can do it by memory. We'll jump into the motion of the debtors for establishing procedures for buying content.

We already talked about that a little bit, Your Honor. We discussed the modifications that we made to the order which resolved the Sony objection and it resolved the creditors' committee objection. The only objection left standing is that of Sirius. And as you know, Your Honor, their objection was that this is an obligation the debtor will be taking on prior to any review of the business plan by the stakeholders, and that we should push off this motion to a later date.

Your Honor, as we've gone through, and I won't go into great detail, as you've heard and as you --

THE COURT: You can incorporate the record from the DIP hearing.

MR. HENES: Thank you. If I could incorporate the record from the DIP hearing, I would appreciate that, Your Honor.

The debtors need to start buying content. The reason we set up these procedures is because -- let me take one step back. The debtors believe that it's in the ordinary course of business to actually purchase the content, it's what the debtors do. It's not only what the debtors do, it's what everybody in the debtors' industry does. They buy content, they put it on the air. What we wanted to make sure, though, was that at a certain level, notice would be given to the parties-in-interest in the case so that they could review that. We also were doing that because certain of our content providers may want orders of the Court, they want comfort that it's an actual deal and it's signed, and Your Honor has approved it. So that's why we set up the procedures the way that we did.

The issues that, obviously, the creditors' committee and Sony raised were very important issues and issues that we entirely understand and we've resolved. The issue, though, with respect to needing to wait I don't believe that there is a reason to wait. And, actually -- we brought this in our pleading, and I guess I said this with respect to the DIP as well, but I think it's a little bit inconsistent for Sirius to tell us that they would provide us with 150 million dollar DIP, which included the purchasing of content, but then on the other hand telling us, you know, if you go with the DIP from somebody else for that 150, you can't now go out and actually buy content at this time. And so I believe, and I'm also going to rest on what we put in our pleading and in our response, but we believe it's in the best interest of the company to have these procedures in place. We think it's in the best interest of the content providers to have these procedures in place.

And, unless you have any questions for me, Your Honor, I will sit down with that.

THE COURT: Let me just find out if Sirius continues to press its objection.

MR. LAURIA: Your Honor, we'll just stand on our objection we don't need to make anymore argument.

THE COURT: Okay. Objection overruled.

MR. LAURIA: Thank you, Your Honor.

THE COURT: Motion's approved.

MR. HENES: Thank you, Your Honor.

The last issue, and I'm going to sit down for this one, is the retention of Moelis as the company's financial advisor. Moelis has counsel here today and I will sit down and let Moelis' counsel and Ms. Golden handle this.

THE COURT: Okay.

MR. HENES: Thank you, Your Honor.

THE COURT: We had a little preview of this when we were in the midst of cross-examination earlier.

MR. HENES: Thank you, Your Honor.

MR. RIELA: Good afternoon, Your Honor. Michael Riela from Latham & Watkins.

I hope we can effectuate what we were discussing before with respect to the application and the retention. If it please the Court, I have a blackline of an order. It's actually outdated, because I've actually reached a settlement with the United States Trustee with respect to the objection. But there's been some changes in the order that have reflected other conversations that we had with the U.S. Trustee as well as the creditors' committee.

THE COURT: This is not longer a contested matter.

MR. RIELA: That is correct, Your Honor.

THE COURT: That's good.

(Pause)

THE COURT: Thank you.

MR. RIELA: Your Honor, this blackline order reflects informal comments we received from the creditors' committee as well as informal comments from the United States Trustee. And what we've agreed to do is instead of the sentence that now is in paragraph 7 of the order, this was our attempt to try to deal with the United States Trustee's objection. Instead of this language we are agreeing instead to delete a paragraph of the engagement letter, the paragraph 12 that basically says that we're not a fiduciary, we don't owe any duties to any outside third parties.

Basically, the intent here and Ms. Golden can speak to it as well, is basically to preserve the issues. There's case law on either side of the question of whether a financial advisor or an attorney for that matter owes fiduciary duties to the estate and creditors. And instead of forcing Your Honor to perhaps make a decision on that particular issue, we decided to take out the language of the order in case litigation were to ever occur, let's hope it doesn't, that matter will be preserved at the appropriate time.

THE COURT: All right, Ms. Golden.

MS. GOLDEN: Thank you, Your Honor. For the record, Susan Golden for the U.S. Trustee.

That's not exactly I would characterize it.

THE COURT: How would you characterize it?

MS. GOLDEN: I would characterize it that, you know, we had been in conversations in order overall to have this conform with the Blackstone Protocol. As Your Honor knows and received our objection we were concerned that in the engagement letter in paragraph 12 as counsel has referenced, there was a disavowal of any fiduciary duty, which is what prompted our rejection. And for a long time we were trying to come to terms and work out language.

We are not assuming that there is any particular ruling or holding on the case law of any issue. By removing that paragraph we view it that the issue is no longer extant and we can live with that.

THE COURT: Well, it seems to me then that there are two different views. One view is that the issue is preserved. The other issue is that the issue has gone away. Do I understand you correctly?

MS. GOLDEN: Well, correct. I guess that is correct.

THE COURT: I think we need to have a better understanding of what's happened in the language so that the parties are in agreement as to what the blackline order means and what they've agreed to in terms of fiduciary duties.

MS. GOLDEN: If you'd like, we can concur.

THE COURT: I think maybe that's a good idea.

MS. GOLDEN: Thank you, Your Honor.

THE COURT: Do you want to do that now or do you want to do that later and submit an agreed order?

MS. GOLDEN: You know, that would be fine if we could work out language.

MR. RIELA: I think an agreed order should be fine, Your Honor, and I don't see any issue with us coming to a resolution on that issue.

THE COURT: I think that may be a better use of everybody's time.

MS. GOLDEN: I agree. I think if we, and counsel meet in the U.S. Trustee's Office meet or discuss on the phone, however, and come up with appropriate language, we'll submit it to the Court.

THE COURT: Fine.

MS. GOLDEN: Thank you.

MR. RIELA: Thank you, Your Honor.

THE COURT: But subject to what I assume will be a drafting solution to this which sets forth the understanding of the parties, the Moelis retention is approved upon the submission of an appropriate order.

MS. GOLDEN: Thank you, Your Honor.

THE COURT: Thank you.

MR. HENES: We have nothing else, Your Honor. Thank you.

THE COURT: Good, I have nothing else. We're adjourned.

MR. HENES: Thank you very much, Your Honor.

(Proceedings concluded at 6:10 p.m.)

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C E R T I F I C A T I O N

I, Sharona Shapiro, certify that the foregoing transcript is a true and accurate record of the proceedings.

Sharona Shapiro

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